



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA No.1198 of 2000(O&M)

Date of Order:01.05.2025

Ajit Singh (since deceased) through LRs

.Appellant

Versus

Mukand Singh

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Jain, Sr. Advocate, with
Mr. Chetan Slathia, Advocate
for the appellant.

Mr. Jatinder Nagpal, Advocate
for the respondent.

ANIL KSHETARPAL, JUDGE (Oral)

I. **BRIEF FACTS:-**

1. The defendant assails the correctness of the concurrent findings of fact arrived at by the courts below while decreeing the plaintiff's suit for specific performance of the agreement to sell allegedly executed by Ajit Singh (defendant) in favour of Mukand Singh (plaintiff).

2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.

3. Ajit Singh and Devinder Singh are two brothers. On 16.09.1979, Ajit Singh and Devinder Singh exchanged some part of their land, however, there was some dispute. Ultimately, on 15.07.1987, the exchange deed was cancelled and a writing to this effect was executed which was attested by two witnesses, namely, Mukand Singh (plaintiff) and Arjan



Dev (PW5).

4. On 15.07.1987, the following three documents were executed:-
 - (a) There are three entries on the same page in the register of the scribe. Entry No.4012, is with respect to execution of the General Power of Attorney by Devinder Singh in favour of Mukand Singh (plaintiff);
 - (b) Entry No.4013, is with respect to the cancellation of the exchange deed between Devinder Singh and Ajit Singh;
 - (c) Entry no.4014, is with respect to the alleged agreement to sell between Ajit Singh and Mukand singh (plaintiff).
5. Plaintiff-Mukand Singh, filed a suit on 28.05.1990, for specific performance of the agreement to sell dated 15.07.1987. The plaintiff-Mukand Singh claimed that on 15.07.1987, Ajit Singh agreed to sold the land measuring 20 bighas along with his share in the electric tubewell connection @ Rs.7000/- per bigha on receipt of Rs.70,000/- as earnest money. The sale deed was agreed to be executed on or before 20.12.1989 i.e. after a period of 2 years and 2 months from the date of the agreement.
6. Ajit Singh denied the execution of the agreement to sell. The suit was decreed on 12.12.1992, and was affirmed in first appeal. During the pendency of the first appeal, Ajit Singh filed an application for permission to amend the written statement which was dismissed, however, the same was set aside by the High Court in revision petition on 29.1.1996. After the amended written statement was filed, the following additional issue was framed:-

“Whether the agreement in question is the result of



forgery and fraud as alleged?OPD”

7. The First Appellate Court called for the report from the trial court. Ultimately, the first appeal was again dismissed on 16.11.1999. Hence, this appeal was filed.

II. ARGUMENTS ADDRESSED

8. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book along with the scanned copy of the requisitioned record.

9. The learned counsel representing the appellant while drawing the attention of the court to the register of the scribe Ex.DY2, submits that two signatures appended by Ajit Singh against entry no.4013, with respect to cancellation of exchange deed has been adjusted towards entry no.4014, by putting a diagonal line in the register. While referring to the deposition of PW5-Arjan Dev, he submits that he denied having attested the cancellation of the exchange deed as well as power of attorney on 15.07.1987, and further admits that he is having cordial relation with Mukand Singh. While referring to the deposition of PW7-Mukand Singh (plaintiff), he submits that he also denies having attested cancellation deed on 15.07.1987. He also denies execution of the power of attorney by Devinder Singh in his favour on 15.07.1987. Hence, he submits that the execution of the alleged agreement to sell is result of fabrication as the signatures of Ajit Singh were taken on various documents because on 15.07.1987 three documents, namely, power of attorney, cancellation of exchange deed and the alleged agreement to sell were executed. He further submits that recital in the agreement to sell with regard to delivery of possession of the suit property



is incorrect because the plaintiff while filing the suit sought decree for possession.

10. Per contra, the learned counsel representing the respondent submits that Ajit Singh, defendant, was present in the office of Registrar, on 20.12.1989, and the agreement to sell has been proved by examining the attesting witnesses Arjan Dev as well as Mukand Singh (plaintiff). He further submits that there is a concurrent findings of fact arrived at by the courts below which should not be interfered.

III. ANALYSIS AND DISCUSSION:-

11. This court has considered the submissions of the learned counsel representing the parties and found that the agreement to sell is not genuine for the following reasons:-

- (i) Perusal of Ex.DY2, the copy of the scribe's register proves that on 15.07.1987, three documents, namely, general power of attorney executed by Devinder Singh in favour of Mukand Singh, cancellation of exchange deed and the alleged agreement to sell are entered at one page. Between entries no.4012 and 4013, there is a straight line in order to distinguish both the entries, however, between entries no.4013 and 4014, the line is diagonal. In fact, from left hand of the page, the line comes straight and thereafter goes towards upwards direction in order to adjust the signature of Ajit Singh.
- (ii) Ordinarily, the difference between the date of the agreement to sell and the date agreed for execution of the



sale deed is few months or at the most one year, however, in this case, the alleged agreement to sell was executed on 15.07.1987, on payment of 50% of the total sale consideration and the date on which the sale deed was to be executed was 20.12.1989, i.e. after a period of more than two years and 5 months.

(iii) PW5-Arjan Dev while appearing in evidence states as under:-

“It is incorrect to suggest that on 15.07.87 Devinder Singh had accompanied us. It is further incorrect to suggest that document regarding exchange was executed on 15.07.87 in the presence of Devinder Singh. On that date no power of attorney was executed on behalf of Devinder Singh in favour of Mukand Singh in my presence at Amloh.”

12. Arjan Dev is the attesting witness of cancellation of exchange deed as well as the agreement to sell, however, he has denied attestation of cancellation of exchange deed.

13. Mukand Singh(plaintiff) has lost his credibility as he made the following statement:-

“I did not attest any exchange deed between Devinder Singh and Ajit Singh on the said date at Amloh. It is incorrect to suggest that I and Arjun Dev had attested an agreement t for cancellation of an exchange between



Devinder Singh and Ajit Singh on 15.07.87 at Amloh.”

“ On that date no power of attorney was executed by Devinder Singh in my favour. I had brought the earnest amount of Rs.70,000/- from my house as it was lying there and I had received that amount from commission agent on account of sale of my produce but AI do not remember name of said commission agent.”

14. It is evident that Mukand Singh (plaintiff) has not made a factually correct statement while appearing in the evidence.

15. Subsequently, Mukand Singh (plaintiff) has also purchased another parcel of the land from Devinder Singh. It also proves that Mukand Singh has reaped benefit of the dispute between the two brothers, namely, Ajit Singh and Devinder Singh.

16. In the year, 1987, the amount of Rs.70,000/- was a big amount. The plaintiff has also not disclosed the source of the aforesaid amount, failing to prove its credibility. The deposition of Dharam Singh, the scribe, has been disbelieved by the courts in the judgments Ex.D2, D6 and D10.

17. On careful reading of the agreement to sell, it is evident that there is a recital of delivery of possession in favour of Mukand Singh, however, when Mukand Singh filed the suit, he claimed possession on the ground that recital in the agreement to sell with regard to delivery of possession is incorrect.

IV. DECISION:-

18. Keeping in view the aforesaid facts and discussion, this court is left with no other choice but to reverse the findings of the courts below.



However, there is an written agreement to sell admitting receipt of Rs.70,000/-, hence, the same is ordered to be refunded along with interest @ 9% per annum from the date of agreement to sell till its realization.

- 19. Consequently, the Regular Second Appeal stands allowed.
- 20. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)
JUDGE

May 01, 2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No