



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

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**RSA-917-2025 (O&M)
Date of decision : 01.09.2025**

Balbir Singh**..... Appellant**

versus

Prem Singh**..... Respondent****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. S.K. Jain, Advocate
for the appellant.

PANKAJ JAIN, J. (Oral)

1. Defendant is in second appeal, aggrieved by the judgment and decree passed by the Courts below, whereby the suit filed by the plaintiff stands decreed.
2. Plaintiff filed suit seeking decree of possession by way of specific performance of agreement to sell dated 14.12.2015 in respect to the land, as detailed out in the headnote of the plaint. As per plaintiff, defendant agreed to sell suit land in favour of the plaintiff @ Rs.3 lakhs per bigha. Agreement to sell dated 14.12.2015 was executed. Defendant received a total amount of Rs.15,60,000 in the presence of witnesses namely Hazara Singh-the head man of the village and Inderjeet Singh. Parties agreed to get the sale deed executed on or before dated 15.12.2016. On the agreed date, the plaintiff remained present in the office of Sub-Registrar, Rajpura to perform his part. He was ready with the balance sale consideration along with the expenses for registration and stamp paper. He waited in the office of Sub-



Registrar from 9 a.m. till 5 p.m. The defendant remained absent. Plaintiff got his presence marked by way of affidavit. The endorsement was made by the Sub-Registrar on the application. The plaintiff issued legal notice dated 10.04.2017 calling upon the defendant to come present before the office of Sub-Registrar on 30.04.2017 to perform his part. 30.04.2017 was Sunday. 01.05.2017 the next day was declared as public holiday. Plaintiff remained present on 02.05.2017 at the office of Sub-Registrar alongwith balance sale consideration, but defendant opted to remain absent.

3. Suit was contested by the defendant. It was claimed that defendant borrowed sum of Rs.3,30,000/- and blank stamp papers were handed over to the plaintiff by defendant on 17.06.2014 in order to secure the amount.

4. Suit filed by the plaintiff was put to trial by the Court of the First Instance framing following issues:-

- “1. Whether the plaintiff is entitled to relief of possession as prayed for? OPP
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable? OPD
4. Relief.”

5. Plaintiff in order to prove execution of agreement to sell examined Inderjeet Singh PW-2. Satinder Singh Clerk of Paramjit Singh, Advocate was examined to prove service of legal notice dated 10.04.2017. Manjinder Singh stamp vendor was examined as PW-4. Deed writer Gurmit Singh was examined as PW-5. Court of the First Instance after examining the evidence threadbare came to the conclusion that the plaintiff successfully proved execution of agreement



to sell and payment of earnest money. So far as defence raised by defendant of having blank signed papers to the plaintiff in lieu of the money borrowed and the return of money is concerned, the same stands rebutted by the plaintiff showing that the amount of Rs. 4 lakh paid by defendant was further transferred to the commission agents. The aforesaid findings stand affirmed by the Lower Appellate Court.

6. Mr. Jain while assailing the findings recorded by the Courts below submits that a specific stand taken by the defendant in his written statement with respect to handing over of blank signed stamp papers to the plaintiff. The same has gone unrebutted. Reliance is being placed upon Order VIII Rule 5 CPC to submit that the factual assertion when not responded to, it amounts to admission. He submits that once the plaintiff failed to specifically respond to the factual assertions made in the written statement, it is deemed to have been admitted. He relies upon *Thangam and another vs. Navamani Ammal 2024 AIR Supreme Court 1324* and *Jahuri Sah and others vs. Dwarika Prasad Jhunjhunwala and others 1967 AIR Supreme Court 109* to hammerforth his contention.

7. He submits that once plaintiff himself admitted that Rs.4 lakhs was returned and was further paid by the plaintiff to Commission Agent, Ambala, the defence raised by the plaintiff stands proved and the Courts below erred in decreeing the suit filed by the plaintiff. He submits that the falsity of the agreement to sell, is evident from the fact that as per covenant contained therein, possession was handed over by the defendant to the plaintiff. Whereas admittedly, the same is still with the defendant and it is for this reason that the prayer made in the suit is



for possession by way of specific performance of the agreement to sell. Not only this, the plaintiff in his cross examination has also admitted the said fact. Further submits that the fact that the sale deed was not executed despite payment of 90% of the total sale consideration proves that in fact the transaction was not for sale of immovable property, but was a loan transaction.

8. I have heard counsel for the appellant and have carefully gone through the records of the case.

9. In terms of the ratio of law laid down by the Supreme Court in the case of ***Kamal Kumar v. Premlata Joshi (2019) 3 SCC 704***, the *lis* related to specific performance of agreement to sell needs to be tested on the touchstone of the following parameters:-

7.1 *First, whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property.*

7.2 *Second, whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract;*

7.3 *Third, whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract;*

7.4 *Fourth, whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff;*

7.5 *Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money etc. and, if so, on what grounds.*



10. In the present case, plaintiff examined attesting witnesses, stamp vendor as well as the scribe to prove agreement to sell. Both the Courts below after examining evidence threadbare concurrently concluded that the plaintiff proved valid execution of agreement to sell. The fact that the defendant claims that his signatures were obtained on blank papers, which were utilized to construct agreement to sell, leads to an inference that the signatures of the defendant on the agreement to sell are not disputed.

11. Defendant pleaded that it was a loan transaction. He was made to sign blank stamp papers which was kept by the plaintiff as security. Onus is upon the defendant to prove his defence.

12. Mr. Jain relied upon Order VIII Rule 5 CPC to claim that the defence raised was not specifically refuted in the replication. The argument is misconceived.

13. After the defendant raised the defence of having signed blank papers in lieu of loan transaction in his written statement, the plaintiff filed replication wherein para 1 of the replication to the preliminary objection and para 3 read as under:-

“That para no. 1 of the preliminary objection is wrong and same is denied. It is absolutely wrong that the any amount was received by the plaintiff from the defendant against the advance money paid by the plaintiff on the basis of agreement to sell. The money transferred by defendant in the account of plaintiff through RTGS was Rs. 4,00,000/- (Four lacs), which was to be paid by the defendant to Commission Agent Ambala that amount has already been paid by the plaintiff to said Commission Agent. It is absolutely wrong that the plaintiff misused any blank signed stamp papers. The agreement in question was duly executed by the defendant in favour of plaintiff after receiving advance amounting to Rs.



15,60,000/-(Fifteen Lacs sixty thousand only). The plaintiff is entitled for the specific performance of agreement to sell dated 14.12.2015)

3. That para No. 3 of the on merits is wrong and same of the plaint is correct. The sub paras No. i, ii, iii of the para no. 3 are wrong and these paras have been mentioned in the written statement wrongly and without true facts. The transaction mention in these paras do not relate to agreement in question.”

14. Thus, from the conjoint reading of para No.1 of the reply to preliminary objection and para 3, it cannot be said that the plaintiff did not refute the factual assertions made by the defendant in written statement.

15. The receipt of Rs.4 lakh stands admitted by the plaintiff. He, however, claims that the same was part of different transaction and the amount was transferred to Commission Agents at Ambala. In order to prove the same, plaintiff examined Commission Agent Sukhwinder Singh as PW6. Sukhwinder Singh proved receipt of Rs. 4 lakh transferred by defendant to plaintiff. The argument raised by Mr. Jain that the blank signed papers were for the same transaction does not appeal to the conscience of the Court and seems to be unnatural. Once defendant knew that he was availing loan from the Commission Agents and was in direct touch with them, there was no need for him to furnish surety to the plaintiff. In order to prove his defence, defendant examined DW1 Bhupinder Singh and DW2 Darshan Singh. They have not mentioned anything about the handing over of the blank signed stamp papers by the defendant to the plaintiff. On the other hand, stamp vendor Baljinder Singh PW4 proved that the stamp papers were purchased by the defendant from him for execution of agreement to sell



on 14.12.2015. Both the stamp papers bear signatures of defendant at their back proving the purchase of stamp papers on 14.12.2015. Inderjit Singh PW2 testified that the earnest sale consideration was paid in his presence at the time of execution of agreement to sell. Scribe PW5 testified that the agreement to sell was handed over by him to the defendant after typing the same. All these facts proved beyond doubt that the defense pleaded by the defendant has fallen flat on the ground.

16. As a sequel of the discussion held hereinabove, this Court finds no ground to interfere in pure finding of fact recorded by the Courts below.

17. As per settled proposition of law, regular second appeals are to be treated as per provision contained under Section 41 of the Punjab Courts Act. Question of law is a pre-requisite to entertain the same.

18. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in ***Randhir Kaur Versus Prithvi Pal Singh & Ors.*** 2019(17) SCC 71 wherein it was held as under :-

*“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in **Sadhu v. Mst. Kishni**, 1980 AIR (Punjab) 85 set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

*"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya** [AIR 1959 Supreme*



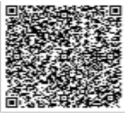
Court 57.], Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.], Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.] and Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

19. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under :-



“XXXX XXXX XXXX

17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

20. Finding no merits in the present appeal, the same is ordered to be dismissed.

21. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

01.09.2025
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No