

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****119****Date of decision: 28.07.2025****RSA-95-2022(O&M)****Jasbir Kaur****...Appellant(s)****Vs.****Kuldeep Kaur & Others****...Respondent(s)***********CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Parampreet Singh Paul, Advocate
Mr. Arvind Pratap, Advocate
for the appellant.

*********NIDHI GUPTA, J.**

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiff for possession by way of specific performance of Agreement to Sell dated 18.05.2015, has been dismissed by both the Courts below.

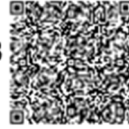
2. It is inter alia submitted by learned counsel for the plaintiff that the learned Courts below were in patent error in non-suiting the plaintiff as it failed to take into account the fact that the Agreement stood proven in accordance with law. Execution of the Agreement is proved by the statement of plaintiff Jasbir Kaur and attesting witness Sant Singh/Lambardar, of the Agreement who stated that the rate of land to be sold was Rs.78000/- per



acre but inadvertently, it was written as Rs.7,80,000/-. It is submitted that even readiness and willingness of the appellant/plaintiff to execute the Sale Deed was proved by cogent evidence led by the plaintiff. It is contended that in these circumstances, there was no cause or occasion for the Courts below to dismiss the Civil Suit.

3. Learned counsel further submits that the plaintiff had produced the copy of Jamabandi for the year 2004-05 wherein in Column 12, it is noted that vide rapat No.317 dated 18.04.2002, the land in question was under attachment. It is pointed out that the plaintiff had categorically given the date of release of land from attachment dated 29.11.2010. It is contended that therefore, limitation would commence from 29.11.2010. Accordingly, Id. Courts below are in error in dismissing the suit on grounds of limitation.

4. It is further argued that as per the terms of Agreement, Sale Deed was to be executed within one month of the Release Order of the land. The plaintiff had issued notice dated 24.12.2010 as per which date of execution of Sale Deed was given as 04.01.2011. The plaintiff had served another notice dated 13.01.2011 upon the defendants requiring them to execute the Sale Deed on 21.01.2011. However, to no avail. Both the Id. lower Court below while discussing the law and the point dismissed the suit and arguments were not met with. As per the allegations the land was released on 29.11.2010 and the Sale Deed was to be executed within one month of the release order of the land. However, despite notices issued by the plaintiff,



same deed was not executed. Then the suit was filed within three years and if it is taken that the land was released on 29.11.2010 then the suit is within the period of limitation i.e. 3 years: The period of limitation is to be taken 3 years from the date of refusal by the defendants after serving the notice given by the plaintiff. Admittedly the defendants were given the notice by the plaintiff and defendants did not execute the Sale Deed. The defendants have not led any evidence to show that the land was released from attachment earlier to 29.11.2010. Learned counsel accordingly prays for setting aside of the impugned judgments and decrees of the learned Courts below.

5. No other argument is made on behalf of the appellant.

6. I have heard learned counsel and perused the case file in detail.

7. Brief facts of the case as pleaded in the plaint are that defendants No.1 to 3 being owners in possession of the suit property had executed an Agreement to Sell dated 18.05.2005 in favour of the plaintiff for sale consideration of Rs.7.80 lacs per acre. The Agreement was executed on behalf of the defendant No.2 by defendant No.3 being Power of Attorney holder. Inadvertently, in the Agreement to Sell, total price of the suit property was mentioned as Rs.7,80,000/-; and total sale consideration was mentioned as Rs.13,16,250/-. As per the plaint, the defendants No.1 and 3 had received Rs.2 lakh as earnest money at the time of execution of Agreement itself in the presence of attesting witness Sant Singh and Sukhjinder Singh. Thereafter, defendant No.1 had received a further sum of Rs.2 lakh on 22.06.2005;



another Rs.2 lakh on 23.10.2006; and a further amount of Rs.50,000/- was received by defendant No.4 on behalf of his father Harpal Singh from the plaintiff. In this way, total amount of Rs.6,50,000/- was paid by the plaintiff. It is averred that it was stipulated in the Agreement that the land measuring 8 kanal 11 marla is attached by the Court, and Sale Deed would be executed within one month of release of land from attachment. It was averred that now the land had been released from attachment on 29.11.2010. The plaintiff had been always ready and willing to execute the Sale Deed by making payments of balance sale consideration. The plaintiff had even sent legal notice dated 24.12.2010 calling upon the defendants to appear in the Tehsil Office on 04.01.2011. As none appeared on behalf of the defendants, another legal notice dated 13.01.2011 was served upon them for execution of Sale Deed on 21.01.2011. However, as none appeared, present suit was filed on 29.03.2011.

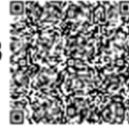
8. Upon notice, joint written statement was filed by defendants No.1, 2 and 4 resisting the suit by submitting that defendants had never executed any Agreement in favour of the plaintiff. Defendant No.3 did not execute any Power of Attorney in favour of other defendants as he had been residing in Canada since the past more than 17 years. The defendants had received no earnest money from the plaintiff. The Agreement set up by the plaintiff was false and fabricated. Suit property had been attached by order of Court. However, when the defendants came to know about the same, they



immediately got it released from attachment. Accordingly, dismissal of the suit was prayed for. Defendant No.3 was proceeded against ex parte. Defendant No.5 had filed a separate written statement averring that he was bona fide purchaser of the suit property to the extent of 4 kanal 19 marla which he had purchased from defendants No.1 to 3 vide registered Sale Deed dated 17.06.2011. Mutation regarding the same had been sanctioned. Accordingly, dismissal of the suit was prayed for.

9. The learned trial Court vide judgment and decree dated 22.09.2017 had dismissed the suit of the plaintiff on the ground that the suit was barred by limitation. The appeal filed by the plaintiff was dismissed by the learned Additional District Judge, Rupnagar vide judgment and decree dated 18.02.2020, and judgment and decree of the lower Court was upheld. Hence, present Second Appeal by the plaintiff.

10. It has firstly been submitted by the plaintiff that the Agreement in question stood proven in accordance with law. However, the file reveals that no doubt, the learned trial Court only on a cursory appraisal of the evidence had held the Agreement to be proved. But in doing so, the learned trial court failed to take into consideration the fact that there were suspicious circumstances surrounding the execution of the Agreement (Ex.P1). Learned First Appellate Court had found that the Agreement (Ex.P1) was not proven satisfactorily as the Scribe was not examined. The plaintiff did not produce any Handwriting Expert to prove the authenticity or genuineness of



signatures of the defendants. Except Sant Singh Lambardar PW3, no attesting witness was examined. Even deposition of Sant Singh was not reliable as he had stated that he did not know the name of Scribe; that he did not know whether the Scribe had signed the Agreement; that he did not remember where he had signed the Agreement. PW3 had expressed ignorance about material facts regarding the execution of the Agreement in question and had given evasive replies which cast shadow of doubt on the execution of the said Agreement. Clearly, therefore, assertion of the plaintiff that the Agreement stood proved, is incorrect.

11. Moreover, it had been contended by the plaintiff that a sum of Rs.6,50,000/- had been paid in total by the plaintiff to the defendants. However, no attesting witness of the alleged payments was produced by the plaintiff. Plaintiff was also unable to explain the overwriting of date 11.04.2009 (Ex.PW1/B) on which date Rs.50,000/- is alleged to have been paid by the plaintiff to the defendant. Thus, 1st Appellate Court held that payment of earnest money by the plaintiff was not proven on record; and plaintiff failed to adduce cogent evidence to prove payment of alleged part sale consideration.

12. Further, it has been stated by the plaintiff that the Sale Deed was to be executed one month after the release of the property from attachment. However, the entire ratio of attachment of suit property is shrouded in mystery. There are no details forthcoming, neither from the learned counsel



nor from the record, regarding attachment of the suit property. Although in the Jamabandi (Ex.P4), there is some reference of report No.317 dated 18.04.2002, however, it is not clear as to in which case, by which order, on which date, property had been attached. Not only did this cast a shadow of doubt on the Agreement itself, the same also put the suit of the plaintiff beyond limitation. It is the case of the plaintiff that the suit property stood released from attachment on 29.11.2010, however, admittedly, no documentary or oral evidence has been brought on record by the plaintiff or even by the defendants to show either order of attachment or order of release. In this view of the matter, I have no doubt in holding that the suit of the plaintiff was rightly held to be barred by limitation as admittedly the Agreement to Sell is dated 18.05.2005; whereas the instant suit has been instituted on 29.03.2011.

13. In view of the above, present appeal is **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

28.07.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No