

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****140****RSA-1338-2025 (O&M)****Date of decision: 28.04.2025****Kanwarjeet alias Kanwaljeet****...Appellant(s)****Vs.****Prem Kumar and another****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:- Mr. K.S.Godara, Advocate for the appellant.***********NIDHI GUPTA, J.**

The defendant no.1 is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff/respondent No.1 herein, for possession by way of specific performance of Agreement to Sell dated 14.03.2014, has been decreed by both the Courts below.

2. The only ground in which learned counsel for the appellant lays challenge to the impugned judgments and decrees is that the appellant is a totally illiterate, deaf and dumb person. The Agreement to Sell in question was executed by the appellant in individual capacity without any guardian appointed by law. As such, the same was not valid as per law. Moreover, there is no writing that the said Agreement was conveyed to the appellant by sign language as the appellant was unable to read, write, speak or hear anything. Even the suit was not filed through



guardian of the appellant as it was filed directly against the appellant. It is submitted that there is violation of Section 119 of the Indian Evidence Act. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned courts below be set aside.

No other argument is raised on behalf of the appellant.

I have heard learned counsel for the appellant/defendant no.1 and perused the case file in great detail.

Brief facts of the case are that the appellant had entered into an Agreement to Sell dated 14.03.2014 (Ex.P-7) with the plaintiff/respondent No.1 herein; whereby he had agreed to sell his land measuring 16 kanals to the respondent. It is not denied that in pursuance to the said Agreement, sum of Rs.9,50,000/- was received by the appellant in cash in front of witnesses on dated 14.03.2014 itself. The remaining amount was to be paid by the plaintiff on the date fixed for registration of sale deed i.e. on 25.03.2014. The appellant had extended a bank loan on the suit land which he/the appellant had undertaken to repay before the target date of 25.3.2014. As the appellant was unable to do the needful by the date fixed, the said date was extended to 25.04.2014 by mutual consent. However, despite the fact that the plaintiff approached the appellant several times and even remitted a notice through his counsel, the appellant had not executed the Sale Deed in terms of the Agreement in question. Accordingly, the plaintiff had filed the present suit on 31.05.2014 after notice to the appellant.



The Agreement dated 14.03.2014 Ex.P-7 was duly proved by the plaintiff in his evidence as PW-3; as also by the evidence of marginal witnesses PW-4 and PW-5. In their cross-examination, PW-4 and PW-5 had reiterated that Rs.9,50,000/- was received by the appellant as earnest money. Moreover, the original Agreement Ex.P-7 was duly notarized before the Notary PW-1. PW1 had deposed that Agreement was read over by him to Sukhpal Rani who is the wife/guardian of the appellant. Sukhpal Rani had heard the Agreement whereafter, the appellant had agreed to the same by nodding his head. DW-4 Sukhpal Rani in her cross-examination had clearly deposed that the appellant does not go alone anywhere and is always accompanied by her. It was also not denied that the Agreement Ex.P-7 bore the thumb impression of Sukhpal Rani; and that the appellant had also put his thumb impression upon the Agreement after fully understanding the nature of the transaction. Otherwise, there was no cause or occasion for the appellant to affix his thumb impression upon the Agreement. No explanation has been given by the appellant side as to how thumb impression of Sukhpal Rani appeared on Agreement to Sell at two places - first at the time of original Agreement to Sell; and the second on the writing dated 25.03.2014 Ex.P-8 which is regarding extension of time of the registration of Sale Deed. Although, thumb impression of Sukhpal Rani was denied on the Agreement, however no evidence was led by the appellant side to prove this assertion as no fingerprint expert was examined. Thus, in view of the above noted undisputed facts on record, the argument of the appellant to the effect



that the appellant was never made to understand the Agreement in question is liable to be rejected. The suit was also filed by the plaintiff against the appellant, through his guardian Sukhpal Rani.

Before the learned Courts below, the appellant had sought to prove his inability to enter into any contract. However, the said contention of the appellant was rejected by the learned trial Court on the ground that the medical evidence duly proved by DW-3 Dr. Sudhir Pathak and DW-5 Dr. Davinder Kumar Bhokahl, and the Disability Certificate DW-3/3, only adverted to the hearing loss of the appellant. It has nowhere been mentioned in any of the evidence that the appellant is incapable of understanding nature of transaction or that the appellant was suffering from any mental infirmity. Even DW-1 Ram Chander, who is known to the appellant, had deposed that the appellant is deaf and dumb but had nowhere stated that the appellant is of unsound mind.

Furthermore, ownership of the appellant over the suit land was proven vide Jamabandi for the year 2009-10 Ex.P-9; and Jamabandi for the year 2014-15 Ex.D-6. It was further proved on record that the appellant had obtained loan from the defendant no.2 bank-respondent No.2 herein and had mortgaged the land in favour of the bank. This clearly establishes that the appellant was fully capable of entering into valid contract as he had mortgaged the land in favour of respondent No.2-bank.

Furthermore, the readiness and willingness of the plaintiff to perform the contract has also been proven on record. It has been proven that on dated 25.4.2014, the plaintiff had duly come present with the



balance sale consideration and sufficient amount for expenses in the Tehsil Complex Fazilka. However, it was the appellant, who was not present. The plaintiff had placed on record the application dated 25.04.2014 to show that on the date of execution of the Sale Deed, he was very much present in the office of Sub Registrar. The said application dated 25.04.2014 Ex.P-5 was proven by the plaintiff from the evidence of PW-2 Gokal Chand; and entry in this regard is carried in his register as Ex.P-6.

Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings on record.

In view of the discussion above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

Pending applications, if any, stand disposed of.

28.04.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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