



In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 1462 of 2024 (O&M)

Date of Decision: 06.03.2025

Kulwant Singh

... Appellant(s)

Versus

Gurmukh Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Mandeep K. Saajan, Advocate
for the appellant(s).

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in *Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157*.

2. The plaintiff assails the correctness of the concurrent findings of facts arrived at by both the Courts below while dismissing his suit for possession by way of specific performance of the agreement to sell dated 04.05.2009. The plaintiff claims that his brother, namely Gurmukh Singh, who was suffering from Cancer, entered into an agreement to sell on 04.05.2009, with respect to the land measuring 13 kanals 12 marlas on receipt of ₹6,00,000/- out of the total sale consideration of ₹ 11,90,000/- in his favour. As per the agreement to sell, the sale deed was to be executed and

the date for execution and registration of the sale deed was extended by three years i.e. upto 02.05.2015 on payment of additional amount of ₹2,00,000/-. Plaintiff's brother Gurmukh Singh died on 05.03.2015. The plaintiff filed a suit on 06.12.2017.

3. While asserting that the plaintiff has misused the blank signed stamp papers of Gurmukh Singh which were available with the commission agents, namely M/s Bhullar Commission Agent, the defendants contested the suit. It was stated that Gurmukh Singh used to sell his produce through the aforesaid Commission Agent. Hence, his blank signed stamp papers were available to the Commission Agent.

4. Upon appreciation of the evidence, the Trial Court recorded the following findings of facts:-

“18. In the present case, it may be noted here that the alleged agreement to sell was got executed on 04.05.2009. As per plaintiff Rs. 6 Lacs in cash as earnest money was paid on the same date and on 02.05.2012, paid another amount of Rs. 2 Lakh in cash to Gurmukh Singh. On the keen perusal of said part of cross-examination of PW1 Kulwant Singh and PW2 Sukhwant Singh, it is revealed that there is contradiction in the testimonies of both the witnesses regarding payment of earnest money. Kulwant Singh deposed that 6 lakhs was lying in his house, whereas PW2 Sukhwant Singh deposed that 6 lakhs was withdrawn from bank and same amount was arranged from relatives. Therefore, The depositions of both the Plaintiff witnesses i.e. PW1 and PW2 weakens the case of the plaintiff.

Moreover, It is very uncommon phenomena in the general practice that no prudent man will take such a grave risk for making the huge part payment of sale consideration without execution and registration of sale deed at the same time. When almost entire sale consideration paid then what remains left on the part of seller except to appear before the sub-registrar for execution and registration of the sale deed. Even otherwise, plaintiff has not able to prove any documentary evidence whereby he has made Rs. 8 lac transaction in favour of deceased Gurmukh Singh. Plaintiff has miserably failed to prove that any consideration pass from plaintiff to Gurmukh Singh at the time of execution of agreement to sell.

19. Further to prove the fact that agreement to sell in question was written by deed writer, Plaintiff has examined the PW4 Arvinderpal Singh Chhabra. The relevant portion of cross-examination of PW4 (deed writer) reads as follows:-

“Today I have not produced the register above said. My register was lost. I registered the DDR on this regard. I do not remember if my any register were lost prior to this register. I do not remember if I registered any DDR prior to this DDR. DDR No. 4 dt. 11/07/2006 was registered by me at P.S. Fzr. DDR No. 19 dt. 26/10/2010 was registered by me at P.S. Sadar/Fzr. It is correct that the contents of the both DDRs are same..... I do not know how many times my register was lost.....I have only one register

for a period of one year.”

From the perusal of the of the said part of the cross examination of PW4 Arwinderpal Singh, it is revealed that he is not a reliable witness. He deposed that he cannot produced the register in which alleged agreement to sell was entered because it was lost and got registered the DDR on this regard. When learned counsel for defendant asked specific question about any DDR registered prior to this DDR, he deposed that he do not remember if he registered any DDR prior to this DDR. Mistakenly, he got DDR No.4 dt. 11/07/2006 which was registered in Ferozepur, Sadar/Ferozepur. Possibility cannot be ruled out that he is a made up witness and has not written the alleged agreement to sell in question. So, his testimony cannot be reliable and further weaken the case of plaintiff. Therefore, this court is of the considered view that since alleged agreement to sell ,Ex. P1 is doubtful, the same cannot be enforced in the court of law. In nut shell the plaintiff has failed to prove the legality of the agreement to sell Ex.P1.”

5. Upon re-appreciating the evidence, this finding of fact was affirmed in appeal. During the pendency of this appeal, the appellant has filed an application for permission to bring on record the additional evidence. It is submitted that Satnam Kaur widow of Gurmukh singh has transferred the property in favour of her daughter Paramjit Kaur, who is daughter-in-law of Sucha Singh, who appeared in the witness box on behalf of the defendants.

6. The learned counsel representing the appellant has been heard at length.

7. The learned counsel representing the appellant submits that both the Courts below have not recorded a finding that the agreement to sell is involved. He further submits that both the attesting witnesses have been examined. Hence, the Trial Court was required to decree the suit. In the alternative, the Trial Court should have granted the refund of earnest money.

8. This Court has considered the submissions of the learned counsel representing the appellant.

9. On a pointed question of this Court, the learned counsel representing the appellant has failed to point out any error in the findings of facts recorded by the Trial Court which has already been extracted above. Both the Courts below have found that the execution of the agreement to sell is doubtful. In such circumstances, the Trial Court could not decree the suit. It would be noted here that both the Courts below have examined the facts and evidence of the case and found that the agreement to sell propounded by the plaintiff is of doubtful origin. It is also found by both the Courts below that payment of earnest money or additional amount of ₹2,00,000/- is doubtful because there are material contradictions in the depositions of PW.1-Kulwant Singh and PW.2-Sukhwant Singh.

10. Furthermore, it is evident that the agreed date for execution of the sale deed was extended from 03.05.2012 to 02.05.2015 i.e. for a period of three years. After the death of his brother the appellant waited for another period of 2½ years before filing the suit.

11. Hence, there is no substance in the arguments of the learned

counsel representing the appellant. Before decree for specific performance of agreement to sell is passed, the Court is required to come to a conclusion that there was a genuine agreement to sell. Once the Court finds that this agreement to sell is not genuine, the Court is not required to grant the relief to the plaintiff. An alternative relief could only be granted to the appellant if the payment was proved. However, in this case, the plaintiff has failed to prove the payment.

12. With regard to the subsequent events, it would be noticed that the transfer of property by Satnam Kaur in favour of Paramjit Kaur, who is daughter-in-law of one of the witnesses, would not be sufficient to doubt the correctness of the defendants’ stand.

13. Keeping in view the aforesaid facts, no ground is made out to interfere with the concurrent findings of facts arrived at by both the Courts below. Hence, the present appeal is dismissed.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 06, 2025
“DK”

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