

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****RSA-612-2022 (O&M)****Reserved on : 10.02.2025****Pronounced on : 18.02.2025**

Ajmer Singh

....Appellant

VERSUS

Gurmail Singh (since deceased) through LRs & Ors.

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Kanwaljit Singh, Senior Advocate with
Mr. Veer Imaan Singh Gill, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 13.10.2016 passed by the Trial Court and judgment and decree dated 07.03.2020 passed by the First Appellate Court.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed a suit for possession by way of specific performance of agreement to sell dated 10.06.2002 with the consequential relief of permanent injunction. It was averred that the plaintiff-appellant and the defendant-respondent No.1 are real brothers. On 10.06.2002 the defendant-respondent No.1 entered into an agreement to sell with the plaintiff-appellant regarding his land measuring 5 Kanal 3 Marla situated in Village Kartarpur, Tehsil Kharar, District SAS Nagar (Mohali) and agreed to sell it @ Rs.4,05,000/- per acre and received Rs.20,000/- as earnest money. The last date for executing the sale deed was fixed as 15.06.2003. As per the plaintiff-appellant, on

15.06.2003 the defendant-respondent No.1 requested that due to some urgent work the sale deed could not be executed, and the date was mutually extended to 15.06.2005 in the presence of witnesses. According to the plaintiff-appellant he was ready and willing throughout to perform his part of the contract but the defendant-respondent No.1 was not ready and willing to perform his part of the contract. The suit was filed on 14.06.2008. It was submitted that during the pendency of the suit the defendant-respondent No.1 sold the suit land to defendant-respondent No.2. Vide sale deed dated 23.05.2013 the defendant-respondent No.2 sold some part of the suit land to the defendant-respondent Nos.3 to 6. On the same date i.e. 23.05.2013 vide another sale deed the other portion of the suit land was sold by defendant-respondent No.2 to the defendant-respondent Nos.7 and 8. These sales by defendant-respondent No.1 and defendant-respondent No.2 were also challenged in the suit. The defendant-respondent No.1 in his written statement denied having executed any agreement to sell in favour of the plaintiff-appellant. According to him, on 05.06.2002 the plaintiff-appellant came to the defendant-respondent No.1 and requested him to give surety for some loan and he got the signatures of the defendant-respondent No.1 on blank stamp papers while giving the impression that the bank would get them typed as per its requirement. The defendant-respondent No.1, in good faith and being the real brother of the plaintiff-appellant, signed on the blank stamp papers. It was when the defendant-respondent No.1 received the summons of the suit that he learnt that the plaintiff-appellant had played a fraud with him and forged the alleged agreement to sell. According to the defendant-respondent No.1 he had no other property except the suit land which was his source of livelihood and that the market rate of the suit land in the year 2002 was Rs.15,00,000/- per

acre and that the alleged agreement to sell is illegal, null, void and result of fraud and not registered as per law and never executed by him. Defendant-responder Nos.3 to 8 also filed separate written statement denying all the averments of the plaint for want of knowledge and submitted that they are bonafide purchasers for consideration and their title should be protected. Replication was filed denying the averments made in the written statements and reiterating those made in the plaint.

3. On the basis of the pleadings of the parties the following issues were framed :

1. Whether the plaintiff is entitled to possession through agreement dated 10.06.2002 of land fully detailed and described in the head note of the plaint ? OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for ? OPP
3. Whether the plaintiff has not come to the court with clean hands ? OPD
4. Whether the suit is not maintainable in the present form ? OPD
5. Relief.

4. The Trial Court vide judgment and decree dated 13.10.2016 dismissed the suit holding that the execution of the agreement to sell was not proved. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 07.03.2020. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-appellant. It is urged that the execution of the agreement to sell dated 10.06.2002 was fully proven on the record and that the plaintiff-appellant was always ready and willing to perform his part of the contract and therefore the suit deserved to be decreed.

6. Heard.

7. In the present case both the Courts have held that the agreement to sell dated 10.06.2002 was not proved and have rejected the case as set-up by the plaintiff-appellant. The original of the agreement to sell Ex.P1 was not produced by the plaintiff-appellant. There were no attesting witnesses. The Trial Court found that “ To the very utter surprise, its original has never seen the light of the day. Now, its perusal transpire that Page no.1 to 5, there is glaring variation in the extent of the contents of the said agreement on every page, there is no uniformity or consistency, nothing that who has scribed the same. It bears signature of only that of the defendant no.1 on every page on right side. Although on the reverse side it is mentioned on the reverse page that the stamp paper of dated 5.6.02 by defendant no.1, the agreement is dated 10.06.02. No attesting witness to the said agreement, no signature of the plaintiff on the same. As far as the extension is concerned, it merely enshrine the body that “ the date is extended to 15.6.05” . The signature of the defendant no.1 is on the center. Nothing that due to what reason or that on what ground the parties assented to the extension or they mutually consented for the same” . It was further held that “ The very patent perusal of the Ex.P1 itself transpire that it has been scribed on the papers which were already signed blank, thus corroborating the version of the defendant no.1 in the written statement in

para no.2, which is also corroborated from the PW1 version in cross examination as above so, when the said agreement to sell in not proved the readiness and willingness is subserviant, nor made out” . When the agreement to sell set-up by the plaintiff-appellant stands discarded, the sale deed executed by the defendant-respondent No.1 in favour of and the defendant-respondent No.2 and thereafter the sale deeds executed by the defendant-respondent No.2 in favour of the remaining defendant-respondent Nos.3 to 8 cannot be impugned by the plaintiff-appellant. The findings recorded by the Trial Court were affirmed by the First Appellate Court. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No cogent and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

8. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

18.02.2025

jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO