



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-1686-2013(O&M)
Date of decision: 12.11.2025

Mahinder Kaur & Others

...Appellant(s)

Vs.

Daler Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kewal Kishan, Advocate for
Mr. Vivek Aggarwal, Advocate
for the appellants.

Ms. Devanshi Sharma, Advocate
Ms. Saksham Sharma, Advocate
for the respondent.

NIDHI GUPTA, J.

Present second appeal has been filed by the plaintiff against the judgment of reversal dated 20.09.2012 passed by Additional District Judge, Karnal whereby Civil Appeal No.209 of 2010 filed by the plaintiff against the judgment and decree dated 11.6.2010 passed by the learned trial court whereby suit of the appellant was only partly decreed, has been dismissed.

2. Brief facts of the case are that the appellant/plaintiff had filed suit for specific performance for Agreement to Sell dated 07.05.2005 along with consequential relief of permanent injunction. It was the pleaded case of the appellant that the parties had entered into an Agreement to Sell that



defendant was owner of the suit land as described in the plaint. He had entered into an Agreement to Sell dated 07.05.2005 in favour of the plaintiff for total sale consideration of Rs.4,25,000/-; of which the defendant had received Rs.1 lakh by way of earnest money. The target date for execution of Sale Deed was set for 20.11.2005. Actual physical possession of the suit land was agreed to be delivered at the time of registration of Sale Deed. It was pleaded that as 20.11.2005 was a Holiday being Sunday, the plaintiff had duly presented himself before the Sub-Registrar on 21.11.2005 and had got his affidavit of readiness and willingness executed. He had waited for the defendant till 5 pm but the defendant did not turn up to perform the contract. Thereafter, the plaintiff had served legal notice upon the defendant however to no avail. As such, the present suit was filed by the plaintiff on 12.12.2005.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned trial Court vide judgment and decree dated 11.06.2010 had partly decreed the suit of the plaintiff as follows:-

“23. As a sequel to above findings, on several issues wherein, plaintiff is not found entitled to specific performance of the agreement, rather is found entitled to money decree of Rs.1.50 lacs with interest, suit is hereby partly decreed by denying relief of specific performance to the plaintiff and granting a money decree of Rs.1.50 lacs with 6% interest in his favour. Consequently, suit is hereby partly decreed for recovery of Rs.1.50 lacs alongwith interest @ 6% p.a. from the date of



payment of earnest money till realisation of the amount and costs of the suit...”

4. Against the said judgment and decree dated 11.06.2010, the plaintiff had preferred Civil Appeal No.209 of 2010 seeking specific performance of the Agreement to Sell and not just mere refund of earnest money. The defendant had also preferred Civil Appeal No.149 of 2010 against the judgment and decree of the trial Court directing refund of earnest money. Vide the impugned judgment and decree dated 20.09.2012 passed by the Additional District Judge, Karnal, the Civil Appeal No.209 of 2010 filed by the plaintiff has been dismissed, against which the present Regular Second Appeal has been filed. Civil Appeal No.149 of 2010 filed by the defendant was allowed by the judgment dated 20.09.2012 thereby setting aside judgment passed by the trial Court and suit of the plaintiff stood dismissed. Two decrees were passed. However, no Regular Second Appeal has been preferred by the appellants/plaintiff against the judgment and decree dated 20.09.2012 passed by the first Appellate Court in Civil Appeal No.149 of 2010.

5. It is inter alia submitted by learned counsel for the appellants that the learned First Appellate Court was in error in non-suiting the appellants as the Agreement in question was duly proved on record. It is submitted that the appellants had examined Gurbax Singh, Attesting Witness as PW2; Avtar Singh, second Attesting Witness as PW3; Stamp Vendor from whom the defendant had purchased stamp paper, as PW4; Scribe of the Agreement as PW6 and himself as PW1. Thus, the Agreement in question



was duly proved on record. However, the First Appellate Court has misread the evidence on record to hold that the Agreement to Sell was not proved in accordance with law. The appellants had also proved the payment of earnest money of Rs.1 lakh as reflected in the bank account statement of the defendant. The receipt to this effect is signed by the defendant in the Agreement itself. It is contended that in these circumstances, the plaintiff is at least entitled to refund of earnest money. It is accordingly prayed that the impugned judgment and decree passed by the learned First Appellate Court be set aside and that of the learned trial Court be ordered to be restored.

6. Per contra, learned counsel appearing on behalf of the respondent/defendant opposes the submissions made on behalf of the appellants and submits that the Agreement in question was not proved in accordance with law. It is submitted that learned trial Court has given a categorical finding that the Agreement in question was never entered for purpose of sale of land. Rather it was obtained as security for the purpose of settling the criminal dispute between the parties. It is contended that even the finding of the learned trial Court that payment of Rs.1 lakh to the defendant was proved, is incorrect; as it has been stated by the plaintiff that the said payment is made in cash and there is no proof of such payment.

7. Learned counsel further points out that the present Second Appeal is also not maintainable as the plaintiff has filed Second Appeal only against the dismissal of his Civil Appeal by the learned First Appellate Court;



and has failed to file a Second Appeal against the Civil Appeal No.149 of 2010 instituted by the defendant which was allowed by the learned First Appellate Court vide judgment and decree dated 20.09.2012. It is submitted that in view of the fact that there is no challenge to the said decree, the present Second Appeal cannot be entertained. Learned counsel accordingly prays for dismissal of the present Second Appeal.

8. No other argument is made on behalf of the parties. I have heard learned counsel for the parties and perused the case file in great detail.

9. Perusal of record of the case shows that the Id. trial Court in Para 18 of its judgment dated 11.06.2010 has given the categoric finding that the Agreement to Sell dated 07.05.2005 was executed between the parties, however, was never intended for the purpose of sale of the land. Rather it was meant to resolve the criminal matters pending between the parties. Thus, plaintiff was held not entitled to specific performance of the Agreement to Sell. The learned trial Court has further given the finding that payment of Rs.1 lakh has been proved. As such, the plaintiff was held entitled to recover Rs.1 lakh along with interest at the rate of 6% from the defendant.

10. Upon examining the record of the case in detail, this Court is not convinced in respect of the correctness of the above-said findings of the learned trial Court as there are material discrepancies and contradictions in the case set up by the plaintiff. The plaintiff had previously stated that the Agreement to Sell dated 07.05.2005 was scribed by Davinder Singh, PW6.



However, during his cross-examination, the plaintiff has changed his above stand and now alleged that the Agreement was signed by Vinay Arora, Advocate. The plaintiff has further stated that the said Agreement (Ex.P1) was notarised by Notary Public. However, the said Notary Public has not been named. This would lend credence to the stand of the defendant that blank papers were got signed by the plaintiff. The fabrication of the Agreement in question is also proved from the fact that the style of writing and the manner in which the same has been thumb-marked and signed by the parties shows it to be fabricated. Admittedly, the first page of the Agreement (Ex.P1) bears the thumb impression and signature of the defendant without mentioning his name. First page also does not bear the signatures of any witnesses. The first page also does not bear the signatures of the Scribe and is not even stamped. On the second page, the signature and thumb impression of the defendant is at two places i.e. on the upper part and at the end of the paper. This would lend credence to the case of the defendant that his signatures were obtained by the plaintiff on blank papers; which were later mis-utilised to scribe the present Agreement to Sell. Between the two signatures of the defendant on the second page, that space has been used to mention the name of the attesting witnesses. In the end, the receipt of earnest money was prepared separately. Thus, the Agreement to Sell is clearly shrouded in suspicious circumstances and could not have been held to be proved in accordance with law.



11. As regards payment of earnest money, there is nothing on record to connect the voucher (Ex.P5) with the earnest money of Rs.1 lakh. No doubt Ex.P6, the Bank Account Statement of the defendant reflects credit entry of Rs.1 lakh. However, the same is not sufficient to connect it to any payment made by the plaintiff. Merely because the defendant was unable to disclose the source of the said credit entry of Rs.1 lakh, would not automatically imply that the same was the earnest money deposited by the plaintiff; especially since plaintiff has failed to disclose the source of the said cash payment. Needless to say, case of the plaintiff has to stand on its own legs. It cannot rely on weak witnesses in case of defendant.

12. Furthermore, the readiness and willingness of the plaintiff to perform the contract is also not established on record. The target date was set for 20.11.2005. It is the case of the plaintiff that as 20.11.2005 was a holiday being Sunday, he had appeared before the Sub-Registrar on 21.11.2005. The appellant has claimed that he had issued notice to the defendant on 22.11.2005 itself, directing the defendant to execute the Sale Deed on 05.12.2005. However, the record establishes that the said notice was sent by the plaintiff through Registered Post only on 08.12.2005 i.e. after the notice/target date of 05.12.2005. Even otherwise, if the target date of 20.11.2005 was a Holiday, it was required that the appellant contact the defendant to execute the Sale Deed on the next date. However, as noted above, the plaintiff neither contacted the defendant nor did he issue notice



to the defendant for 21.11.2005. Even notice for next alleged target date of 05.12.2005 was issued only on 08.12.2005.

13. Moreover, the Hon'ble Supreme Court in a recent judgment in **"R. Shama Naik Vs. G. Srinivasiah"** Law Finder Doc ID # 2670489 decided on **28.11.2024**, has held that readiness and willingness is to be proven from: a) availability of funds; b) presence marked in the Tehsil. Relevant extract is:

"11. There is a fine distinction between readiness and willingness to perform the contract. Both the ingredients are necessary for the relief of specific performance.

12. While readiness means the capacity of the plaintiff to perform the contract which would include his financial position, willingness relates to the conduct of the plaintiff."

14. Thus, even if it is assumed that plaintiff was present before the Sub Registrar on target date of 21.11. 2005, there is nothing on record to show that plaintiff was in possession of the balance sale consideration. As such, refund of earnest money cannot be granted in favour of the plaintiff.

15. Last but not the least, the plaintiff is not able to extricate himself from the fact that he has filed the instant Second Appeal only against the dismissal of his Civil Appeal by the learned First Appellate Court. Admittedly, the appellant has not preferred any Second Appeal against the judgment dated 20.11.2012; whereby Civil Appeal No.149 of 2010 filed by the respondent/defendant was allowed. Thus, there is no challenge to the said judgment and decree.



16. Relevant findings returned by learned First Appellate Court vide judgment and decree dated 20.09.2012 are as under:-

“16. Needless to say, as far as the dispute as to execution of the agreement to sell in question, is concerned, as pleaded by the appellant-defendant as far as the signatures and thumb impressions of the appellant-defendant on the agreement to sell, Ex.P-1 as well as the revenue stamp, Ex.PW-4/D, on the second page of the Ex.P-1, are concerned, it was not disputed as it was alleged that it was taken on blank papers. As such, the only question remains whether this agreement is fabricated as alleged by the appellant-defendant.

17. Accordingly after going through the evidence brought on record by both the parties, as per the stand taken by both the parties, it comes out that findings recorded by lower court are against the evidence as well as law. As mentioned above, as per the appellant-plaintiff, the agreement to sell in question was scribed by PW-6, Devinder Singh, who also alleged so when appeared in the witness-box but during his cross-examination, the appellant-plaintiff failed to corroborate this fact rather he changed the stand and alleged that the agreement to sell, Ex.P-1 was actually scribed by Vinay Arora, Advocate, since deceased, at his office and it was read over and explained to the parties by him without naming Devinder Singh or any role of that person in this regard and then the plaintiff introduced another story alleging that thereafter the agreement to sell, Ex.P-1 was notarized by a Notary Public without naming such Notary Public whereas in the affidavit, this story was never pleaded, rather, it was alleged that the agreement was scribed by Devinder Singh only.



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20. Last but not the least, the manner and style of writing of the Ex.P-1 coupled with the signature and thumb impression also shows that it was fabricated. First of all, on the first page of Ex.P-1, there are signatures of appellant-defendant, Daler Singh along with thumb impression without mentioning the name of the person who has thumb marked the same. And then there is no explanation that why it was thumb marked as well as signed by the appellant-defendant. Then there are no signatures of witnesses on the first page. Similarly first page is also neither signed by PW-6 nor stamped. Then on the second page, the signatures and the thumb impression of the appellant - defendant are at two places, i.e., in the upper part of the paper and then at the end of paper and there is no explanation as to why it was so as usually it is not so required. On the contrary such type of signatures are obtained only to execute a affidavit, which requires signatures at two points. This aspect further justifies the stand of appellant defendant that the said papers were got signed and thumb marked as blank papers.

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25. Now, let us see what is the evidentiary value of the stand taken by PW-7, Ashok Kumar, Clerk of the Central Bank, who proved about depositing of a sum of Rs.1 Lakh by the appellant defendant in his account as per Voucher, copy of which is Ex.P-5. As per the appellant-plaintiff, it was the amount of earnest money but the appellant-defendant has nowhere admitted it so although he admitted that he has deposited this amount in his account. Then this entry nowhere shows that this amount was deposited by the appellant-plaintiff as earnest money. Simply



because of the fact that the appellant-defendant has failed to prove the source of this money, it cannot be assumed that it was the amount of earnest money. Above all, as per the appellant-plaintiff, the agreement in question was executed in the morning hours whereas PW-6, the alleged scribe of the Ex.P-1, failed to give any time when it was scribed whereas it is admitted fact that the money was deposited in the bank on 7.5.2005 must be before 2:00 PM, which are the usual working hours and it is not possible that it was taken by the appellant - defendant from the appellant plaintiff. Then the appellant-plaintiff was knowing that the money is to be deposited in the bank why he himself had not went with the defendant to do so or why he has not given the cheque. Then the statement of Account Ex.P-6 shows that the said money was withdrawn on various dates and, thus, there is nothing to say that this amount was the amount of the earnest money. As such, no link of this fact can be established with the story propounded by the plaintiff leading to execution of Ex.P-1. On the contrary, it is proved that the very basis of the story of the appellant-plaintiff leading to execution of the agreement in question is proved to be false and fabricated.

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27. Then it is alleged by the appellant plaintiff that on the very next day i.e. 22.11.2005, he issued a legal notice to the appellant - defendant directing him to execute the sale deed on 5.12.2005 but it is admitted fact that this notice was sent through registered post only on 8.12.2005, when the alleged date has already passed and then why a fresh notice was against not issued and why the suit was filed immediately, thereafter, on 12.12.2005 without waiting for the reply of the appellant -



defendant. This fact further shows that all this was done by the appellant - plaintiff in a suspicious manner on the basis of a fabricated document, which was never executed as per the requirements of the law.

28. In view of the above discussed legal and factual aspect, it comes out that there are more than sufficient circumstances which prove that the impugned agreement to sell is proved to be a fabricated and thus fraudulent document and there was no legal agreement to sell between the parties and as such the plaintiff - appellant is not entitled for any relief whatsoever. However, learned Lower Court failed to appreciate these facts and assumed the due execution of Ex.P-1 as per the requirements of the law ignoring the above said suspicious circumstances. As such, the findings of learned lower court are against the facts as well as law and results into miscarriage of justice and thus, liable to be set aside and the suit filed by the appellant - plaintiff is liable to be dismissed.”

17. In view of the above, the present Second Appeal is **dismissed**.
18. Pending application(s) if any also stand(s) disposed of.

12.11.2025
Sunena

(Nidhi Gupta)
Judge

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