



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-3691-2013 (O&M)

Date of decision: 04.08.2025

Gurnek Singh

...Appellant(s)

Vs.

Kamaljit Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. G.S.Nagpal, Advocate and
Mr. Sucha Singh Mast, Advocate
for the appellant.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the appellant/defendant against the concurrent judgments and decrees of the Courts below; whereby the suit filed by the plaintiff/respondent herein for possession by way of specific performance of the Agreement of Sale dated 02.01.2006 executed by defendant in favour of the plaintiff of suit property measuring 1 Biswa i.e. 1.2/3 Marlas, has been decreed by both the Courts below; and it has been directed that defendant is given three months time to execute the sale deed in favour of plaintiff from the date of judgment, upon receipt of balance sale consideration failing which the plaintiff shall be at liberty to take the recourse of law; and defendant is restrained from alienating the suit property in favour of anyone else except the plaintiff.



2. Order sheets indicate that respondent was served and had put in appearance as far back as on 21.04.2014. However, on the last date of hearing i.e. 10.04.2023, parties were not represented. Office report shows that Id. Counsel for the respondent was duly notified, however none appears. As such, the matter being of such an old vintage, is being heard and decided in the absence of Id. counsel for the respondent.

3. Brief facts of the case are that the plaintiff/respondent had filed a suit averring that defendant is owner in possession of suit property measuring 1 Biswa i.e. $1\frac{2}{3}$ Marlas. Defendant had entered into Agreement dated 02.01.2006 to sell the suit property to plaintiff for total sale consideration of Rs.26,000/- of which Rs.20,000/- was paid as earnest money. Remaining Rs.6,000/- was to be received by the defendant at the time of execution and registration of Sale Deed. No date was fixed in the Agreement for execution of Sale Deed. The plaintiff had requested the defendant many times to get the Sale Deed executed after receiving balance sale consideration of Rs.6,000/-. Plaintiff was always ready and willing to perform his contract and has ready cash of Rs.6,000/-. Plaintiff had even served legal notice upon the defendant on 27.02.2006 to execute the Sale Deed within 15 days. The said notice was admittedly received by the defendant on 11.03.2006 but Sale Deed was not executed. As such, plaintiff filed the present suit on 22.09.2006.

4. Upon notice, defendant had appeared and resisted the suit by filing written statement and denied the Agreement. It was averred that



defendant had never executed any Agreement as alleged nor received Rs.20,000/-. The Agreement, if any, was false, forged and fabricated and is a result of fraud and misrepresentation. As no Agreement was executed, therefore, no question of fixing the date and being ready and willing did not arise. However, defendant admitted the factum regarding service of notice by the plaintiff and also stated that he had filed reply to the said notice. Denying all other assertions, defendant had prayed for dismissal of the suit.

5. Replication was not filed.

6. From the pleadings of the parties, following issues were framed by the learned trial Court: -

1. Whether the defendant had executed an agreement to sell dated 2.1.2006 executed in favour of the plaintiff ? OPP

2. Whether the defendant had received Rs.20,000/- as earnest money? OPP.

3. Whether the plaintiff remained ready and willing to perform his part of the contract? OPP.

3A Whether the plaintiff is entitled to damages in alternative, if so? To what extent ? OPP.

3B Whether the plaintiff is entitled to permanent injunction as prayed for? OPP.

4 Whether the suit is not maintainable ? OPD.

5. Whether the agreement to sell in question is a forged and fabricated document ? OPD.

6. Relief.”

7. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Samrala vide judgment and decree dated 08.02.2011 had decreed the suit of the plaintiff in the



manner as mentioned above. The Civil Appeal filed by the defendant was dismissed by the Additional District Judge, Ludhiana vide judgment and decree dated 20.03.2013. Hence, the present Second Appeal by the defendant.

8. Learned counsel for the appellant *inter alia* contends that learned Courts below were in error in decreeing the suit of the plaintiff as the respondent is a property dealer and a Kabbadi player who fraudulently got the signatures of appellant, though there was no such agreement for sale. Moreover, there was no date mentioned in the agreement regarding execution of the said sale deed which goes to the root of the case. The sale consideration for the property, as mentioned by plaintiff was Rs.26,000/- which is not believable because the price of property was more than that. Out of total sale consideration i.e. Rs.26,000/- plaintiff paid Rs.20,000/- as earnest money and balance of Rs.6,000/- was to be paid at the time of execution of the sale deed. However, this is not reliable version put forth by the plaintiff as anybody intending to buy a property that too for a meagre amount of Rs.26,000/- will not pay the same in installment and give entire amount of Rs.26,000/- at once and get sale deed executed on the same day.

9. It is further submitted by learned counsel for the appellant that both the Courts below have not considered that the appellant has specifically denied his signatures on the alleged sale deed dated 2.1.2006 as the same was forged and fabricated document. Respondent/plaintiff has very cunningly got the signatures of the appellant on the same. No



evidence has been led by the plaintiff regarding payment of Rs.20,000/- to the appellant. Respondent who is a property dealer and Coach of Kabbadi has befooled the appellant who is innocent and illiterate person. To prove that agreement to sell dated 2.1.2006 was false and fabricated, appellant has examined DW1 Baljinder Singh, who has specifically stated that agreement was false and fabricated document.

10. It is accordingly prayed that the present Second Appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

11. No other argument is raised on behalf of the defendant. I have heard learned counsel for the appellant and perused the case file in detail.

12. I find no merit whatsoever in the submissions made on behalf of the appellant/defendant as it has been concurrently found by learned Courts below that the Agreement to Sell dated 02.01.2006 has been proved by one of its witnesses Raghbir Singh (PW1); and Deed Writer Diwan Chand (PW2) Wasika Nawis who have stated that defendant has executed Agreement to Sell qua 1 biswa land out of OK-9M in favour of plaintiff for total sale consideration of Rs.26,000/- out of which Rs.20,000/- has been paid to defendant as earnest money. Deed Writer Diwan Chand has recorded the gist of agreement in his register at Sr. No. 2 dated 02.01.2006. Thus, Plaintiff has duly proved the execution of Agreement dated 02.01.2006 and passing of earnest money of Rs.20,000/- by examining PW1 and PW2.



13. Further, the plaintiff has placed on record legal notice dated 27.02.2006 vide which plaintiff requested defendant to get sale deed executed and registered in his favour after receiving balance sale consideration as per terms and conditions of said Agreement within 15 days from receipt of said notice. Defendant has admitted receiving this legal notice and replying to the same. Yet, sale deed was not executed by the defendant, and no reason has been given for not doing the same. Thus, plaintiff has also proved his readiness and willingness to perform his part of contract by serving notice Ex.P3 upon the defendant.

14. Further, as per Jamabandi for the year 2005-06, Ex.P7, and Jamabandi for 2000-01, defendant has been clearly recorded as owner in possession over half share out of khasra No. 199 M - OK 9M.

15. The defendant had examined Baljinder Singh to show that document dated 02.01.2006 was false and fabricated document. No doubt this witness deposed that it was forged and fabricated document, but he nullified his statement by admitting that no document was written in his presence. He has also admitted that there was no other person except him; and then contradicted himself by stating that there were 3 persons present, and defendant had signed one document in his presence. What clinches the entire case is that defendant himself stepped into witness box and admitted his signatures on Agreement Ex.P1. The admitted signatures of the defendant on Agreement corroborate the fact that Agreement was executed by defendant; and plea of fraud was taken only to wriggle out of Agreement dated 02.01.2006 which was executed by defendant in



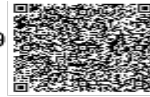
presence of marginal witnesses. The defendant has not examined any document expert to show that Agreement has been converted from a blank sheet on which signatures were already procured by plaintiff.

16. Further, the Agreement Ex.P1 is scribed in Punjabi and so are the signatures of defendant. Signatures of defendant are not at one place but at two places on Agreement to Sell Ex.P1. The signatures are at appropriate place and therefore, it cannot be assumed that same were earlier obtained on blank paper and thereafter Agreement was fabricated. The signatures of defendant in Punjabi showed that he is literate man and was very much in knowledge of contents of Ex.P1 which is also scribed in Punjabi.

17. Even otherwise, the present second appeal is liable to be rejected as this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559***; has held as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the



second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in the procedure provided by the CPC or by any other law for the time being in force.”

(Emphasis added)

18. In view of the above noted, factual and legal position, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below.

19. The present Regular Second Appeal is hereby **dismissed**.

20. Pending applications, if any, stand disposed of.

04.08.2025

Divyanshi

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No