**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****201****RSA-4973-2013 (O&M)****Date of decision: 17.11.2025****Balwinder Kaur****...Appellant(s)****Vs.****Gurpreet Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

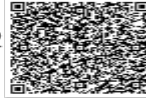
Present:- Mr. J.K.Singla, Advocate
for the appellant.

Mr. Kanwal Goyal, Advocate
with Ms. Komal Klana, Advocate
for the respondent.

NIDHI GUPTA, J.

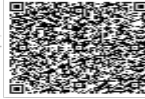
Defendant is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the plaintiff/respondent herein, for specific performance of Agreement dated 01.05.2006, has been decreed by both the Courts below.

2. Brief facts of the case as pleaded in the plaint are that vide agreement to Sell dated 1.5.2006, the defendant had agreed to sell the suit land measuring 12K to the plaintiff for a total sale consideration of Rs.7,57,500/- of which defendant had received Rs.2,20,000/- as earnest money at the time of execution of Agreement. Balance sale consideration was to be paid by the plaintiff at the time of execution of Sale Deed which was to be got registered on or before 30.11.2006. It was averred that the



plaintiff was always ready and willing to perform his part of contract. Accordingly, plaintiff had remained present before the office of Sub Registrar Sunam on 30.11.2006 alongwith balance sale consideration. However, the defendant did not turn up to execute the Sale Deed and had threatened to alienate the same. With these pleadings, present suit was filed on 14.02.2009.

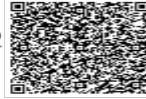
3. Vide judgment and decree dated 26.11.2011, the learned Civil Judge (Senior Division), Sunam had decreed the suit of the plaintiff *“with costs and a decree for possession by way of specific performance of agreement dated 01.05.2006 directing the defendant to execute sale deed with all rights of ownership, title and free from all encumbrances with regard to agriculture land measuring 12 Kanal comprising mustil and Killa No.38//13(8-0), 18 min (4-0) situated at village Bir Kalan, Tehsil Sunam District Sangrur and to get the same registered in favour of the plaintiff for the consideration of RS.7,57,500/- after adjusting the amount of RS.2.20,000/- already received by the defendant from the plaintiff as part payment at the time of agreement dated 01.05.2006 and after receiving the balance sale price Rs.5,37,500/- from the plaintiff. The defendants are directed to get the sale deed of the disputed property executed and registered in favour of the plaintiff in terms of agreement for sale dated 01.05.2006 with in three months thereafter, failing which, the plaintiff shall be at liberty to get the sale deed executed and registered in his favour through the agency of the court.”*



4. The appeal filed by the defendant was dismissed by the learned Additional District Judge, Sangrur vide judgment and decree dated 27.09.2013. Hence, the present Second Appeal by the defendant.

5. It is *inter alia* submitted by learned counsel for the appellant/defendant that the learned Courts below were in a patent error in granting decree of specific performance to the respondent as they failed to appreciate that it was the clear stance of the appellant in the written statement filed by him before the learned Trial Court that the alleged Agreement to Sell dated 01.05.2006 is false, forged and fabricated and the same was never executed by the defendant.

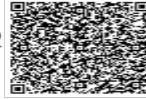
6. It is submitted that the correctness of the above is proved from the fact that plaintiff has taken various discrepant pleas from time to time. By way of example, it is pointed out that plaintiff in his plaint has nowhere made mention of any previous Agreement dated 01.07.2005 allegedly executed between the plaintiff and the defendant. Plaintiff has not even disclosed this fact in his examination-in-chief. However, in his cross-examination, the plaintiff has suddenly come up with the alleged previous Agreement dated 01.07.2005 Mark A in which he claimed to have received amount of Rs.2 lacs from the defendant. It is contended that the learned Courts below have accepted these new facts introduced by the plaintiff only during his cross-examination, as gospel truth and have decreed the suit of the plaintiff which was not admissible as per law as the same was contrary to stance taken by him in the plaint.



7. It is further submitted that the finding on issue No. 1 is wrong and is liable to be set aside. The consideration paid at the time of execution of the agreement dated 01.05.2006 is not proved as the alleged Scribe has not been produced by the plaintiff; and regarding the other PW-2 Karnail Singh, the plaintiff himself stated in his statement that he does not know that Karnail Singh has put his signature on behalf of plaintiff. It is contended that the statement of the plaintiff and attesting witness clearly shows that the alleged agreement to sell is false and fabricated document.

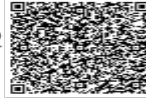
8. It is further submitted by learned counsel for the appellant that the Appellate court also recorded wrong finding. Instead of dismissing the suit of the plaintiff on the ground that the plaintiff has not come to court with clean hands and has failed to prove the consideration amount given by him to the defendant, the Appellate court has given wrong finding beyond the pleading of the case that the plaintiff has given Rs. 20,000/- only as earnest money in pursuance of agreement dated 01.05.2006 and the earnest amount of Rs.2,00,000/- was paid in pursuance of previous agreement and the same was not adjusted and the same was not written in the Agreement to Sell dated 01.05.2006. It is submitted that, therefore, plaintiff has failed to prove consideration in pursuance of Agreement to Sell.

9. It is contended that it was never the case of the plaintiff that the alleged earnest amount stood adjusted in the alleged previous Agreement to Sell dated 01.07.2005. It is submitted that it is settled



principle of law that Agreement to Sell is not valid and legal document unless passing of consideration is proved. In the present case, plaintiff has clearly failed to prove passing of consideration in pursuance to alleged Agreement to Sell dated 01.07.2005. As such, findings of the learned Courts below that Agreement is proved is contrary to the facts and evidence on record. Thus, judgments and decrees of the Courts below are passed on the basis of assumption and presumption and deserve to be set aside.

10. *Per contra*, learned counsel for the respondent vehemently opposes submissions made on behalf of the appellant and submits that the Agreement to Sell dated 01.05.2006 stood duly proved as the said document contains thumb impression of the defendant on multiple places; which have duly been proved from the report of Handwriting Expert. The Agreement is also thumb marked by father of the defendant as consenting party. The defendant has not contested either her own thumb impression or that of her father. Even no criminal complaint was moved by the defendant to say that Agreement was forged. Science of thumb impression is a perfect science which is duly proved from the evidence of Handwriting Expert Dr. Inderjit Singh who compared writing and thumb impression. Plea of forgery is not proved. It is contended that onus to prove forgery was upon the defendant. Plaintiff has further proved Agreement to Sell by PW-2 Karnail Singh Attesting Witness. It is submitted that plaintiff has also proved his readiness and willingness to perform the contract. It is contended that accordingly, the learned courts



below were correct in granting specific performance of the Agreement to the respondent. He accordingly prays for dismissal of the present Appeal.

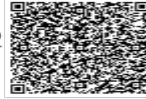
11. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in detail.

12. I find no merit in the submissions made on behalf of the respondent/plaintiff.

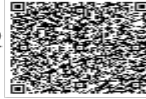
13. The clear unambiguous pleaded case of the plaintiff in the plaint is that at the time of execution of Agreement to Sell on 01.05.2006 the defendant had received an amount of Rs.2,20,000/- from the plaintiff as earnest money; and balance sale price was to be paid by the plaintiff to the defendant at the time of execution and registration of Sale Deed.

14. In direct contradiction of the above averment in the plaint, plaintiff during his cross-examination as PW1 has introduced a previous Agreement dated 01.07.2005/ Mark-A, now stating that an amount of ₹2,00,000/- was received by the plaintiff as earnest money in pursuance to the previous agreement dated 1.7.2005. The relevant extract of the cross examination of the plaintiff is as under: -

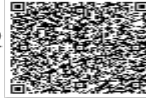
“It is correct that I was a candidate for MLA Election. I was a candidate of the All-India Shiromani Akali Dal. I have also contested the election of the Shiromani Gurudwara Prabandhak Committee, Sri Amritsar Sahib. I do not know Kulwant Singh son of Surjan Singh, Resident of Budhlada. I know Gurcharan Singh s/o Joginder Singh, Resident of Sheron. I do not remember that Gurcharan Singh son of Joginder Singh, Resident of Sheron; Kulwant Singh s/o Surjan Singh, Resident of Budhlada have given Witness or not in my favour



in any agreement to sell. I do not remember that regarding this agreement any Registry/Sale-Deed was done or not. With Balwinder Kaur we had entered into two agreements to sell. Balwinder Kaur had been extending the period of agreement. I do not remember how much Earnest Money was given earlier. I also do not remember that earlier amount of Earnest Money was adjusted in the other subsequent agreement or not. We had not mentioned about the extension of agreement in the subsequent agreement. On the Photostat copy of the agreement dated 01.07.05, I identify my signatures. The agreement is Mark-A. It is correct that in the agreement Mark-A, I had given a sum of Rs. 2 Lac as Earnest Money. This agreement [Mark-A] has been attested by Shashi Mohan, Notary Public. It is correct that on this the Witness of Gurcharan Singh & Kulwant Singh is there, which I can tell after seeing Mark-A. It is correct that the Registry/Sale-Deed of the Mark-A/agreement was 30.11.05. In the agreement Mark-A a sum of Rs. 2 Lacs were adjusted on account of Earnest Money/Biyana i.e., in Ex.P-1. The case of the Defendant was pending in the Court of D.C. Sahib, because of which, the Registry/Sale Deed of agreement Mark 'A' could not be done. A sum of Rs. 20000/- was again taken by defendant. Thereafter, the Defendant had been taking more money. At the time of Ex.P-1, we gave a sum of Rs. 2,20,000/-. When the agreement Ex. P-1 was written, at that time, we had given a sum of Rs. 20,000/- in Cash to the Defendant. We did not tell the entire thing to the Advocate Sahib. The agreement Mark-A with the mutual consent of both the parties was got cancelled. The Original agreement/Mark-A, was torn-out by us.” (Emphasis added)



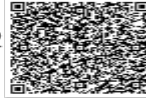
15. From a bare reading of the above, it is clear that the plaintiff has firstly stated that he does not recall whether any sale deed in pursuance to the previous agreement dated 1.7.2005/Mark-A was registered or not; that he does not remember whether any earnest money was paid in lieu of the previous agreement; that he does not remember whether the said amount was adjusted. In the same breath, the plaintiff has contradicted himself by also stating that a sum of ₹2 lakh/- was paid by the plaintiff as earnest money in the previous agreement dated 1.7.2005, which has been adjusted against the present agreement dated 1.5.2006/ Ex.P-1. Admittedly, the said previous Agreement finds no mention in the plaint, or in the Affidavit of examination-in-chief Ex.PW1/A. The said previous Agreement dated 01.07.2005 Mark A is introduced for the first time only during cross-examination. Despite the above said blatant contradiction, rather blatant concealment, of the alleged Agreement dated 1.7.2005/ Mark-A, the learned First Appellate Court for unknown reasons has given the finding that *“Even if Mark A has been concealed on behalf of the respondent/plaintiff, the case of the respondent/plaintiff cannot be thrown over board”*; and has further gone on to hold that *“Now for Rs.2.20 lacs as earnest money is shown in Ex.P1, it would be read as Rs.20,000/- as earnest money which is required to be adjusted.”* Needless to say, in such circumstances, suit of the plaintiff could not have been decreed for specific performance of the contract. Moreover, the latter finding of the first Appellate Court is unsustainable, also for being beyond the pleadings. Contention of the plaintiff that Mark



A was produced by the defendant is belied from above cross-examination from which it is clear that it is the plaintiff who has introduced this previous Agreement to Sell. Thus, there is merit in the contention of the appellant that Agreement to Sell is not valid and legal document unless passing of consideration is proved.

16. Further, the learned Courts below have held the Agreement to be proved only on the basis of evidence of PW2 Karnail Singh Attesting witness. Admittedly the second attesting witness, the Scribe, and the Stamp Vendor have not been examined by the plaintiff. It is my view that the above said findings of the learned Courts below that even in this situation, the Agreement dated 1.5.2006 stood proved, goes against all tenets of law. It is established position in law that in order to prove Agreement to Sell, the plaintiff was required to examine the second attesting witnesses, the Scribe, as well as the Stamp Vendor to prove that stamp papers were purchased by the defendant. This was especially so in view of the fact that the appellant in his written statement had totally denied the Agreement to Sell and had stated the same to be false, forged, and fabricated. In this regard, reference may be made to judgment passed by this Court in **Nirmal Singh v. Darshan Singh, (Punjab And Haryana) : Law Finder Doc Id # 2335714**; wherein it is held as under:-

“A. Specific Relief Act, 1963 Section 16(c) Suit for specific performance of agreement to sell - Plaintiff failed to step into the witness box and produce crucial witnesses, including marginal witness and scribe of the agreement - Adverse inference drawn against plaintiff for withholding best



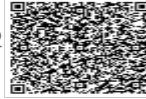
evidence - Held, readiness and willingness to perform part of the contract can only be proved by the plaintiff and not by any other person.

D. Evidence Act, 1872 Section 114 Adverse inference-Plaintiff failed to examine marginal witnesses and deed writer of agreement to sell - Adverse inference drawn by courts below upheld - No substantial question of law found for interference in judgments of courts below."

17. Reference is again made to the judgment passed by this Court in **Vikas Bansal v. Prem Masih, (Punjab And Haryana) : Law Finder Doc Id # 2660157**; wherein it is held that *"Non-examination of material witnesses amounts to withholding best evidence - Suit dismissed."* Thus, the learned Courts below were in patent error in holding that the Agreement dated 1.5.2006 was proved in accordance with Law.

18. The learned Courts below also lost sight of the fact that evidence of PW-2 Karnail Singh could not have been relied upon as, the plaintiff himself stated in his statement that he does not know that Karnail Singh has put his signature on behalf of plaintiff.

19. Further, it is the case of the plaintiff that the Agreement dated 1.5.2006 was also proved from the fact that thumb impression of the defendant was proved on the Agreement to Sell by evidence of Handwriting Expert PW3. No doubt, respondent/plaintiff had examined Handwriting Expert from whose report, thumb impressions of the defendant on the said Agreement were allegedly proved; and the defendant had failed to lead any evidence in rebuttal. However, plaintiff cannot take any advantage of any weakness in the case of the defendant;



and is required to prove his own case on its own legs. Reliance in this regard is again placed upon the judgments cited hereinabove. Needless to say, non-examination of material witnesses will prove fatal to the Agreement. Moreover, Appellant cannot be called upon to lead evidence in the negative i.e. onus to prove forgery of his thumb impression/signature upon the Agreement dated 1.5.2006, cannot be placed upon the appellant.

20. The second necessary ingredient in order to grant a decree of specific performance is that the readiness and willingness of the plaintiff is proved. The Hon'ble Supreme Court in **R.Shama Naik vs. G.Srinivasiah (SC): Law Finder Doc Id # 2670489**, has held that in order to establish readiness and willingness, the following two specific ingredients are required to be fulfilled: (a) presence in the Tehsil office; and (b) demonstrate availability of funds. In the present case, plaintiff has produced his Affidavit of Attendance dated 30.11.2006 Ex.P2. However admittedly, the said Affidavit of Attendance makes no mention of the fact that plaintiff was in possession of the balance sale consideration. A perusal of the Affidavit of Attendance Ex. P-2 shows that there is no specific averment in Ex.P-2 regarding the specific amount of balance sale amount; there is even no specific averment regarding the mode of payment of said balance sale consideration, whether the said amount was to be paid in cash, or in some other manner. On a Court query, learned counsel for the respondent has informed that the said amount was to be paid by the plaintiff in cash; however, the source of the said cash amount

is not disclosed by the plaintiff. Clearly therefore, plaintiff had failed to prove his readiness and willingness as required as per law; and therefore, he could not have been granted decree of specific performance.

21. It has also been contended on behalf of learned counsel for the respondent that Agreement to Sell bears the photograph of the defendant. However, a perusal of the LCR shows that photograph borne on the Agreement Ex.P1 is a group photograph in which several persons are standing together. Admittedly, plaintiff and defendant are well known to each other; and therefore, it will not be far-fetched for the plaintiff to be in possession of group photograph of the plaintiff alongwith other family members cannot be ruled out. It is also to be considered that it has not been denied by the plaintiff that even as on today, appellant is in possession of suit land.

22. In view of the discussion above, the present regular second appeal is hereby **allowed**; and the impugned judgments and decrees of the learned Courts below are set aside.

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

17.11.2025
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No