



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

206

RSA-1592-2015(O&M)

Date of decision: 23.12.2025

Sanjana Devi

...Appellant(s)

Vs.

Pahalad Singh & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Abhinav Gupta, Advocate
Mr. Jatinder Kumar Kansal, Advocate
for the appellant.

Mr. Mukesh Rao, Advocate
Mr. Shubham Aneja, Advocate
for respondent No.1.

NIDHI GUPTA, J.

Present appeal has been filed by the defendant No.2 against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the plaintiff/respondent no.1 herein, for specific performance of Agreement of Sale dated 18.04.2005, has been decreed for specific performance, by both the Courts below.

2. It was pleaded in the plaint that vide Agreement to Sell dated 18.04.2005 the defendant No.1/pro-forma respondent No.2 herein, had agreed to sell suit land measuring 112.5 square yards/approximately 3.5 marla to the plaintiff @ of Rs.1350/- per square yards i.e. for total sale



consideration of Rs.1,51,875/-. It was pleaded that of the said amount plaintiff had paid Rs.90,000/- as earnest money in cash. It was further stated that subsequently also, plaintiff had paid an amount of Rs.25,000/- on 21.09.2005 in cash to defendant no.1. Target date for execution of Sale Deed was set for 18.10.2005. However, defendant No.1 and her son Kamal Singh in collusion with defendant No.2/appellant herein, and defendant No.3/pro-forma respondent No.3 herein, to defeat the rights of the plaintiff executed two Sale Deeds: one dated 24.04.2006 in favour of defendant No.2; and another Sale Deed dated 25.04.2006 in favour of defendant No.3 regarding the property in dispute. It was averred that the said Sale Deeds are not binding upon the rights of the plaintiff in view of the prior Agreement to Sell dated 18.04.2005 executed by defendant No.1 in favour of the plaintiff. Accordingly, a declaration was sought that the Sale Deeds dated 24.04.2006 and 25.04.2006, and the mutations on the basis of these Sale Deeds in favour of the defendants be declared null and void. Further, a decree of specific performance by way of possession of land was also prayed for on the basis of the Agreement of Sale dated 18.04.2005. With these pleadings, the suit was filed on 01.07.2006.

3. Upon notice, the defendant No.1 had appeared and filed written statement admitting the Agreement of Sale dated 18.04.2005, as also receipt of earnest money of Rs.90,000/- + Rs.25,000/-. Defendant No.1 also admitted in her written statement that she had executed Sale Deeds dated 24.04.2006



and 25.04.2006 in favour of the defendants No.2 and 3 respectively. However, it was denied that the said Sale Deeds were executed in connivance with the said defendants. It was pleaded that the said Sale Deeds were executed as plaintiff was not having balance sale consideration to register the Sale Deed.

4. Defendants No.2 and 3 had filed joint written statement denying the averments of the plaint. It was pleaded that defendants No.2 and 3 are bona fide purchasers of the suit land for valuable sale consideration and without notice vide Sale Deeds dated 24.04.2006 and 25.04.2006. Accordingly, dismissal of the suit was prayed for.

5. The plaintiff filed replication, controverting the averments made in the written statement and reiterating those made in the plaint.

6. On the basis of pleadings of the parties, following issues were framed by the learned trial Court vide order dated 13.08.2007: -

I. Whether the defendant no.1 agreed to sell 4 marla land, to the plaintiff @1350/- per sq yard on 18.4.2005? OPP

II. Whether the defendant no. 1 received amount of Rs.90.000/- as earnest money from the plaintiff? OPP

III. Whether the plaintiff is entitled for such a performance of the agreement to sell dated 18.4.2005? OPP

IV. Whether the plaintiff has been ready and is still ready and willing to perform his part of contract? OPP

V. Whether the sale deed dated 24.4.2006 and 25.4.2006 executed by defendant no.1 in favour of defendants no.2 and 3 are illegal, null and void and not binding of the plaintiff? OPP



VI. Whether the suit is not maintainable in the present from?

OPD

VII. Whether the suit is time barred? OPD

VIII. Whether the defendants no.2 and 3 are Bonafide purchaser?

OPD

IX. Whether the plaintiff has concealed the material facts if so its effect? OPD

X. Relief.”

7. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned trial Court decided issues No.1 to 5 in favour of the plaintiff; issue No.8 was decided against the defendant; issue No.7 was decided against the defendant; issues No.6 and 9 were decided against the defendant; and had accordingly decreed the suit of the plaintiff with costs *“to the effect that the plaintiff is entitled to the relief of specific performance of alleged agreement to sell dated 18.4.2005 as Ex. PW1/1 on payment of remaining sale consideration and expenses charges within one month of passing the judgment. The defendant no.1 is directed to get execute the sale deed in favour of the plaintiff on receiving the balance sale consideration and expenses and to hand over the vacant possession of above land within one month from the date of judgment, failing to which the plaintiff is entitled to get execute the sale deed on payment of remaining sale consideration and possession by process of the court.”*



8. The Civil Appeal filed by the defendant No.2 was dismissed with costs by the Additional District Judge, Rewari vide judgment and decree dated 27.01.2015. Hence, present Second Appeal by the defendant No.2.

9. It is inter alia submitted by learned counsel for the appellant that in passing the impugned judgments and decrees, the learned Courts below have ignored the fact that the plaintiff did not approach the Court with clean hands. It is submitted that it is the case of the plaintiff that Sale Deed could not be executed in favour of the plaintiff on 18.10.2005, as Kamal Singh son of defendant No.1 Basanti Devi had informed him that there was prohibition on the registration of Sale Deeds in Haryana. Ld. Counsel contends that this is nothing but a cock and bull story which was cooked up by the plaintiff in order to cover the lapse of time. No evidence has been led by the plaintiff to prove that on 18.10.2005, all registries stood prohibited in Haryana. In fact, there was collusion between the plaintiff and defendant No.1. It is for this reason that defendant No.1 had filed written statement admitting the Agreement in question. It is contended that this is evident from the fact that after executing the Sale Deed dated 24.04.2006 in favour of the appellant, Basanti Devi defendant No.1 in collusion with the plaintiff had executed ante-date Agreement to Sell with the plaintiff. It is reiterated that a collusive Suit was filed by the plaintiff as: a) there is no evidence that any earnest money was paid by the plaintiff to the defendant No.1; and b) no ban of registration of Sale Deeds was proved by the plaintiff. However, the Courts



below failed to call for any explanation from the plaintiff in respect of these glaring lacunae in the case put forth by him.

10. It is further contended that in any case, it is settled position in law that any Agreement to Sell does not confer any right on the vendee. On the other hand, the appellant has bought the suit property from defendant No.1 for valuable sale consideration of Rs.2,47,500/-. This fact that payment of entire sale consideration of ₹2,47,500/- was made, is recorded in the sale deed itself. Further, the Sale Deed was proved from the evidence of DW5. Thus, the appellant has a registered Sale Deed in his favour; which has been admitted by the vendor/defendant No.1 in her written statement. Therefore, appellant is bona fide purchaser of the suit property without notice.

11. It is further submitted that the Courts below have ignored the fact that execution of the Agreement dated 18.4.2005, was concealed from the appellant. It is argued that although both the courts below have noted that the appellant did make an enquiry from patwari as to the fact that the land purchased on 24.04.2006 belonged to Basanti Devi, yet, the Courts below have exercised their discretion arbitrarily. This very fact that the appellant made enquiry from revenue official goes to show that the appellant acted in a very prudent and careful manner before purchasing the land in dispute.

12. It is further submitted that the learned courts below failed to take into account the fact that the willingness on the part of respondent to



get the agreement to sell registered was absent and he was not ready to fulfill his contractual obligation. This can be clearly concluded from the conduct of the respondent as, the date for execution of agreement to sell dated 18.04.2005 was 18.10.2005; and since the respondent/plaintiff was not having funds to get the agreement to sell executed therefore, he did not press the execution of Sale Deed on 18.10.2005.

13. In support of his contentions, learned counsel for the appellant relies upon judgment of this Court in **Hariya v. Mam Chand, (P&H) : Law Finder Doc ID # 1437575**, wherein it is held as under:-

“5. As regards argument of learned counsel that the payment of sale consideration has not been proved, it may be noted that Tej Ram, the owner of the property has not stepped into the witness box and denied that fact. In the registered sale deed receipt of entire sale consideration is admitted and specifically recorded. Tej Ram has never challenged the sale deed on the ground that he has not paid the amount of sale consideration. He has never made any complaint to the police or any other authority for complaining non-payment of the sale consideration.

6. As regards argument of learned counsel for the respondent that once the agreement to sell is proved, the decree for specific performance of the agreement to sell has to follow, is erroneous because section 20 of the Specific Relief Act, 1963 gives discretion to the Court as to whether to pass a decree for specific performance in the facts and circumstances of the case or not. It is well settled that the decree for specific performance of the agreement to sell is to be granted based upon sound judicial



principles and after taking into consideration the facts of the case.

7. Next contention of learned counsel that defendant no.2 is not proved to be bonafide purchaser, has some substance, however, the weakness in the case set up by the defendant cannot be made basis to grant relief of specific performance of the agreement to sell in favour of the plaintiff. No doubt, defendant no.2-appellant in an effort to prove that he is a bonafide purchaser has tried to set up a prior agreement to sell in his favour dated 18.06.1997 but failed to prove that. However, keeping the fact that the plaintiff and defendant no.1 are cousins and defendant no.2 is not related to them, correctness of sale deed executed in favour of defendant no.2 by defendant no.1 cannot be doubted.”

14. Ld. Counsel contends that the present case is squarely covered by the ratio of the above said judgment. It is accordingly prayed that the present appeal be allowed, and the impugned judgments and decrees of the learned courts below, be set aside.

15. Per contra, learned counsel for the plaintiff/respondent No.1 herein vehemently opposes the submissions made on behalf of the appellant. Learned counsel for the plaintiff takes this Court through the Lower Court Record in minute detail to submit that the plaintiff had duly proved the Agreement to Sell by producing the attesting witness and the Scribe thereto. In any event, the said Agreement was admitted by the vendor/defendant No.1 in her written statement to the suit. Plaintiff had also proved payment



of consideration from the evidence of witnesses. It is contended that in fact, there was collusion amongst the defendants purely with the view to defeat the rights of the plaintiff. It is contended that this is established from the fact that a joint written statement was filed by the defendants No.2 and 3.

16. Ld. Counsel for the plaintiff further submits that the Readiness and willingness of the plaintiff is evident from the fact that plaintiff had paid 80% of the sale consideration. It is pointed out that this payment has not been denied either by the appellant or by defendant No.1. It is further submitted that in actual fact, on the target date/18.10.2005, the plaintiff had approached defendant No.1 to get the Sale Deed registered. However, it was mentioned to the plaintiff that at that time, that registration of Sale Deeds was banned in the State of Haryana. Accordingly, defendant No.1 had sought extension of time by way of writing (Ex.PW1/2); which too has been proved from the evidence of plaintiff witnesses. In support of his contentions, learned counsel for the plaintiff relies upon judgment of this Court in **Bahadur Ram v. Lakhwinder Singh, (P&H) : Law Finder Doc ID # 143864.**

17. Ld. Counsel also submits that objection raised by the appellant that the Agreement in question was not a registered document is rendered nugatory from the judgment of this Court in **Ram Kishan v. Bijender Mann alias Vijender Mann (P&H)(DB) : Law Finder Doc ID # 403538**, wherein it is held as under:-



“11. A conjoint appraisal of Sections 53A of the Transfer of Property Act, 1882 Sections 17(1A) and 49 of the Indian Registration Act, 1908, particularly the proviso to section 49 of the Indian Registration Act, in our considered opinion, leaves no ambiguity that, though, a contract accompanied by delivery of possession or executed in favour of a person in possession, is compulsorily registrable under Section 17(1A) of the Registration Act, 1908, but the failure to register such a contract would only deprive the person in possession of any benefit conferred by Section 53A of the 1882 Act. The proviso to section 49 of the Indian Registration Act clearly postulates that non-registration of such a contract would not prohibit the filing of a suit for specific performance based upon such an agreement or the leading of such an unregistered agreement into evidence.

12. A suit for specific performance based upon an unregistered agreement to sell accompanied by delivery of possession or executed in favour of a person who is already in possession, cannot, therefore, be said to be barred by Section 17 (1A) of the Registration Act, 1908.

XXX

14. We, therefore, hold that :

(a) a suit for specific performance, based upon an unregistered contract/agreement to sell that contains a clause recording part performance of the contract by delivery of possession or has been executed with a person, who is already in possession shall not be dismissed for want of registration of the contract/agreement;



(b) the proviso to Section 49 of the Registration Act, legitimises such a contract to the extent that, even though unregistered, it can form the basis of a suit for specific performance and be led into evidence as proof of the agreement or part performance of a contract.”

18. It is accordingly prayed that the impugned judgments suffer from no error, and the same be upheld; and the present appeal be dismissed.

19. No other argument is made on behalf of the parties.

20. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find no merit in the submissions made on behalf of the appellant.

21. It is the case of the appellant that she is owner of suit property by way of registered Sale Deed dated 24.04.2006 executed in his favour by defendant No.1 in respect of suit land measuring 3.5 marla for total sale consideration of Rs.2,47,000/-, which amount was paid by the appellant to the defendant no.1 as recorded in the Sale Deed. However, as will be demonstrated hereinafter, the case as put forth by the appellant suffers from serious flaws, which the appellant has been unable to reconcile.

22. Firstly, it is admitted by learned counsel for the appellant that the original Sale Deed dated 24.04.2006 was not exhibited by the appellant before the learned trial Court; and has been brought on record only as ‘Mark B’ (available at page 247 of the LCR). No explanation is forthcoming as to why the original Sale Deed was not produced by the appellant. Further,



on a Court query, learned counsel for the appellant has admitted that the payment of sale consideration of Rs.2,47,500/- was made by the appellant to the defendant No.1 by cash. The appellant is unable to disclose the source of these funds. It has also been repeatedly asserted by learned counsel for the appellant that this fact of payment finds mention in the Sale Deed. No doubt, it is mentioned in the Sale Deed that sale consideration is Rs.2,47,500/-. However, it is also duly recorded in the Sale Deed dated 24.4.2006 itself that the said amount was not paid by the appellant to the defendant No.1 in front of the Sub-Registrar. As such, appellant has been unable to prove the Sale Deed dated 24.4.2006; and/or payment of sale consideration to defendant No.1 in accordance with law.

23. It is also undisputed that a joint written statement to the Suit was filed by the appellant/defendant No.2, and defendant No.3 - who is none other than the daughter-in-law of defendant No.1. From a conjoint reading of the above facts, it would appear that there was collusion amongst the defendants; and not between the plaintiff and defendant No.1 as alleged by the appellant.

24. It has also been contended by the appellant that due diligence was conducted by the appellant inasmuch as appellant had confirmed from the Patwari that Revenue Record was borne in the name of defendant No.1. However, no evidence has been led by the appellant to substantiate his said assertion. Admittedly, even no Revenue Official has been examined by the



appellant to prove his said contention. Thus, the case put forth by the appellant suffers from serious inexplicable and unresolved flaws.

25. On the other hand, the respondent/plaintiff has proved the **Agreement to Sell** dated 18.04.2005 (Ex.PW1/1 at page 233 of the LCR) by examining the Attesting Witness Jagdish Chand PW1 who tendered his Affidavit (Ex.PW1/A) deposing that defendant No.1 had duly executed the Agreement to Sell in favour of the plaintiff. A perusal of Ex.PW1/A (at page 179-181 of the LCR) shows that PW1 has categorically stated therein that:-

“2...The agreement to sell was typed by Anil Kumar Lakhera, deed writer, on the instructions of the seller/defendant Smt. Basanti Devi. After typing the agreement, the deed writer read over and explained the contents of the agreement to Smt. Basanti Devi in the presence of witness Kamal Singh and myself. After reading, hearing, understanding, and finding the contents correct, Smt. Basanti Devi received ₹90,000/- in cash and affixed her thumb impression in my presence and in the presence of her son Kamal Singh...”

26. The plaintiff has further proved the Agreement to Sell from the evidence of Anil Lakhera/Scribe/PW2, who had tendered his affidavit (Ex.PW2/A - at page 191-193 of the LCR), wherein he stated as follows:-

“2...The said agreement was typed by me on the instructions of Smt. Basanti Devi. The contents of the aforesaid agreement were read over, explained, and made clear to Smt. Basanti Devi in the presence of the witnesses. After reading, hearing, and understanding the same, and admitting it to be correct, she



affixed her thumb impression on it in my presence and in the presence of the witnesses. The witnesses also affixed their signatures in my presence and in the presence of Smt. Basanti Devi. The original agreement is Ex. PW-1/1."

27. Moreover, in the written statement filed by defendant No.1, she has not disputed that she had put her thumb impression upon the Agreement in question in presence of her son Kamal Singh; who has also not disputed the same. Even further, defendants No.1 and 3 did not step into the witness box and were accordingly proceeded against ex parte. From the above facts, it is clear that the Agreement to Sell was proved on record in accordance with law.

28. The plaintiff has also proved **payment of earnest money** of ₹1,15,000/-. Firstly, Receipt of the said amount has been admitted to by the defendant no.1 herself in the Written Statement filed by her. Further, from the deposition of PW1 reproduced above, it stands proved that defendant No.1 had received earnest amount of Rs.90,000/- on 18.04.2005.

29. The receipt of further amount of Rs.25,000/- on 21.09.2005, stands proved from Ex.PW1/3 (at page 234 of the LCR) - viz the endorsement of defendant no.1 on the reverse of the Agreement in question - which reads as follows: -

"I have done an agreement to sell of my plot measuring 112 ½ sq. yards. situated at Rewari (Shanti Nagar) for at the rate of Rs. 1350/- per sq. yards with Sh. Pahlad Singh son of Sh. Lal



Singh resident of Rewari. The target date of execution of agreement to sell is fixed for 18.10.2005 against which I have received a part payment of 90,000/- Cash as Bayana on 18.04.2005. Today I have received another 25,000/- from the remaining payment in the presence of the witnesses. Therefore, I have received the total part payment of 1,15,000/- out of the total sale consideration amount. The parties shall remain bound by the terms and conditions of the agreement to sell dated 18.04.2005. Written on dated 21.09.2005.”

30. The above said Writing bears the thumb impression of defendant no.1, and the signature of her son, Kamal Singh and Jagdish Chand. This endorsement was proved by Jagdish Chand PW1 Attesting Witness in his Affidavit (Ex.PW1/A), wherein he has stated that: -

“4. That on 21.09.2005, an amount of Rs.25,000/-was paid by Pahlad Singh to Smt. Basanti Devi in accordance with the agreement to sell. A writing in this regard was prepared by deed writer Anil Lakhera on the instructions of Smt. Basanti Devi, which was read over and explained to her. Thereafter, Smt. Basanti Devi affixed her thumb impression in my presence and in the presence of the witness Kamal Singh, son of Smt. Basanti Devi, signed as a witness, I also signed as a witness, and Pahlad Singh also affixed his signatures. The said writing is Exhibit PW 1/3, and I identify my signatures as well as the signatures/thumb impressions of all concerned persons thereon.”

31. Ex.PW1/3 was also proved by the Scribe/PW2 from his Affidavit (Ex.PW2/A), relevant extract of which is as follows: -



“3. That I have seen the writing dated 21.09.2005 which is in my own handwriting and was written on the instructions of Smt. Basanti Devi. The same was read over and explained to Smt. Basanti Devi in the presence of the witnesses. After reading, hearing, and understanding it, and admitting it to be correct, she affixed her thumb impression after receiving a sum of ₹ 25,000/- (Rupees Twenty-Five Thousand only) in cash in the presence of the witnesses. I identify my handwriting, which is exhibited as Ex. PW-1/3.”

32. No evidence to the contrary was led by the defendants. Thus, payment of earnest money of Rs.90,000/- + Rs.25,000/- i.e. total amount of Rs.1,15,000/- out of total sale consideration of Rs.1,55,000/- stands proved.

33. As regards readiness and willingness of the plaintiff to perform the Contract, it is the case of the plaintiff that on the target date of 18.10.2005, he had approached defendant no.1 to execute the sale deed, however, was informed by her son Kamal that all registries in State of Haryana are closed. This has been denied by the defendants, and it has been contended that plaintiff had failed to perform the contract as he did not have the requisite balance sale consideration. In Para 5 of her written statement, defendant No.1 has stated as follows: -

“5. That reply to the contents of Para no. 5 of the plaint is that it is admitted that answering defendant executed an Agreement to Sell in favour of the plaintiff on 18.04.2005 in respect of the suit property, and the target date for execution of the sale deed was fixed as 18.10.2005. However, it is denied



that the defendant's son, Kamal Singh, ever informed the plaintiff that the registration of sale deed had been stopped by the Haryana Government and the sale deed would be executed within 15 days of the reopening of registration by the Haryana Government. The rest of the averments in the said paragraph are incorrect and hence denied. It is further denied that the Haryana Government had imposed any restriction on registration of sale deed. On the contrary, the plaintiff, being fully aware, deliberately failed to deposit the remaining sale consideration amount, which was not available with him, and therefore did not get the sale deed registered in his name. It is submitted that the amount paid by plaintiff was duly and correctly forfeited by the answering defendant. The plaintiff has no right to get the sale deed registered in his favour from the answering defendant.”

(Emphasis added)

34. However, the incorrectness of the above averments is firstly proven from the fact that plaintiff had admittedly paid almost 80% of the total sale consideration to defendant no.1. Furthermore, to controvert the above averments, the plaintiff has produced Writing dated 18.10.2005 (Ex.PW1/2 - at page 236 of the LCR), which is copy of endorsement made by the parties on the back of the Agreement; as per which the ban by the government is noted, and it is mutually agreed between the parties to defer the target date. The said endorsement duly bears the signatures of the plaintiff and defendant No.1; and is witnessed by PW1 Jagdish Chand; as



also by Kamal Singh, son of defendant No.1. The said endorsement -

Ex.PW1/2, reads as follows: -

“That there is a ban by the government for execution of Registry therefore, both parties' vendor and vendee out of their mutual consent agrees that whenever the registry opens, the remaining consideration will be taken and the registry will be done after 15 days of its opening. All the expenses of registry shall be borne by the buyer. The parties shall remain bound by the terms and conditions of the agreement to sell dated 18.04.2005. Written on dated 18.10.2005.”

35. In this respect, PW1 in his Affidavit (Ex.PW1/A) has stated that:

“3. That on 18.10.2005, due to the closure of registration of sale deeds, in my presence and in the presence of her son Kamal Singh, Smt. Basanti Devi agreed that whenever the registration reopened, the sale deed would be executed in favour of the purchaser at the plaintiff's expense within 15 days of its reopening. A writing to this effect was prepared by Anil Kumar Lakhera, deed writer, in his own handwriting on the instructions of Smt. Basanti Devi. After writing the document, the deed writer read over and explained the same to Smt. Basanti Devi in the presence of myself and witness Kamal Singh. After reading, hearing, understanding, and finding it correct, Smt. Basanti Devi affixed her thumb impression in my presence and in the presence of her son Kamal Singh, and both Kamal Singh and I signed as witnesses in the presence of Smt. Basanti Devi. I have seen the original writing dated 18.10.2005, which bears my signatures, and I identify the same. The said document is Exhibit PW 1/2.”



36. Even Deed Writer in his Affidavit (Ex.PW2/A) has stated that:-

“4. That I have also seen the writing dated 18.10.2005, which is in my own handwriting and was written on the instructions of Smt. Basanti Devi. The same was read over and explained to her in the presence of the witnesses. After reading, hearing, and understanding it, and admitting it to be correct, Smt. Basanti Devi affixed her thumb impression in the presence of the witnesses and the purchaser. I identify my handwriting, which is exhibited as Ex. PW-1/2. That on both the aforesaid writings, Kamal Singh son of Sh. Pyare Lal, who is the son of Smt. Basanti Devi, also affixed his signatures as a witness.”

37. As noted above, although the defendants have denied the above deferment, however, they have led no evidence to substantiate their claim; or to controvert the above evidence produced by the plaintiff.

38. The plaintiff had also examined PW3 Ratan Lal Saini, Advocate who had tendered his Affidavit (Ex.PW3/A) who had deposed in favour of the plaintiff and proved the Legal Notice issued by the plaintiff through registered post. Service of the Legal Notice by the plaintiff also indicates his readiness and willingness to perform the contract.

39. It is also to be noted that, admittedly, no evidence in rebuttal was led by the defendant/appellant to prove that the thumb impressions borne on the said documents Ex.PW1/1/Agreement to Sell; the Writing dated 18.10.2005/Ex.PW1/2; and Writing dated 21.09.2005 Ex.PW1/3 admitting receipt of Rs.25,000/-; is not that of Basanti Devi. If these



documents were not thumb marked by defendant No.1, then appellant could have examined Handwriting Expert. However, this has not been done. In fact, even in her written statement, defendant No.1 has not denied her thumb impression upon the said documents. Whereas, plaintiff has examined two witnesses i.e. Attesting Witness PW1 Jagdish Chand and Scribe PW2 Anil Kumar Lakhera to prove the said documents. It has been contended on behalf of the appellant that the said witnesses are interested witnesses. However, appellant has been unable to substantiate his said contention and show as to how the said witnesses are interested witnesses.

40. Lastly, delivery of possession by the defendant No.1 to the plaintiff is proved from the Agreement to Sell itself wherein it is categorically stated that *"The possession of the said property has been given to the purchaser on the spot who has taken possession."* Even PW1 Jagdish Chand, has admitted in his cross-examination that *"In my presence, Basanti handed over possession to Pahlad and got the lock fixed, and it was written in the agreement that a lock of Prahlad was fixed at the spot."*

41. From the above facts it therefore follows that: a) the Agreement to Sell stands proved; b) Payment of 80% of the sale consideration stands proved; c) readiness and willingness of the plaintiff to perform the contract is also proved; and d) delivery of suit land to the plaintiff is also proved.



42. On the other hand, original Sale Deed dated 24.04.2006 has not been exhibited by the appellant and has been placed on record only as Mark B. Even no witness has been examined by the appellant to prove the alleged payment of sale consideration of Rs.2,47,500/-. It has been admitted by the appellant that the said payment was made by her in cash to the defendant No.1. As noted above, in the said Sale Deed, it is clearly recorded that the said payment was not made in front of the Sub-Registrar. As such, contention of the appellant that she is bona fide purchaser for valuable sale consideration remains clouded in suspicion. Merely putting suggestion of collusion by the appellant to the plaintiff during cross-examination of the plaintiff, would by itself does not establish collusion. On the contrary, from the above facts, it would appear that there is collusion amongst defendants as, defendants No.2 and 3 have filed joint written statement. Even otherwise, the record reveals that during cross-examination of the appellant as DW7, even the plaintiff had put suggestion of collusion between the defendants.

43. In these circumstances, no error can be found in the impugned judgments of the learned courts below decreeing the suit of the plaintiff for specific performance. I find support in my view from a judgment of the Hon'ble Supreme Court in **P. Ramasubbamma v. V. Vijayalakshmi (SC) : Law Finder Doc ID # 1969932**, wherein it is held:-



“5.2 Considering the fact that original defendant No. 1 - vendor - original owner admitted the execution of agreement to sell dated 12.04.2005 and even admitted the receipt of substantial advance sale consideration, the learned Trial Court decreed the suit for specific performance of agreement to sell dated 12.04.2005. Once the execution of agreement to sell and the payment/receipt of advance substantial sale consideration was admitted by the vendor, thereafter nothing further was required to be proved by the plaintiff - vendee. Therefore, as such the learned Trial Court rightly decreed the suit for specific performance of agreement to sell. The High Court, was not required to go into the aspect of the execution of the agreement to sell and the payment/receipt of substantial advance sale consideration, once the vendor had specifically admitted the execution of the agreement to sell and receipt of the advance sale consideration; thereafter no further evidence and/or proof was required.”

44. Reliance may also be placed on the judgment of this Court in

Bal Singh v. Ravinder Singh, (P&H) (DB) : Law Finder Doc ID # 84223,

wherein it is held as under:-

“11. Even the second contention raised by the learned senior counsel is without any merit. Learned trial Court as well as learned Single Judge has clearly noticed that Shrimati Akko while appearing as DW-1 has stated that she had told Baj Singh (appellant) that she had entered into an earlier agreement with the plaintiff qua the land in dispute and had even delivered possession of a part of it. The factum of delivery of possession was even admitted by Surjan Singh, defendant and



also by Balkar Singh defendant-appellant. In view of the aforesaid admission of the defendants, the defendant-appellants cannot claim that they had no knowledge of the previous agreement. Accordingly, the defendants cannot be heard to claim that they were bona fide purchasers of the property without any notice of the previous agreement.

In view of the aforesaid discussion, we do not find any merit in the present appeal. The same is, accordingly, dismissed."

45. Even otherwise, this Court in second appeal has limited jurisdiction to interfere in the concurrent findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, wherein it is 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."

46. To recapitulate, it may be summarised that from the above facts, it is established on record that the plaintiff/PW4 had proved the documents (Ex.PW1/1 to Ex.PW1/3) by producing witnesses. These documents were executed by defendant No.1 in the presence of her son. It is to be noted that the Agreement and both the Writings on the Agreement (Ex.PW1/2 and PW1/3) bore the signatures of Kamal Singh son of defendant No.1. The said documents have not been denied by defendant No.1; and defendant No.1 has not pleaded in her written statement that the said documents do not bear her signatures and do not bear the signatures of her son. It is not even their case that the said documents are forged by the plaintiff. Non-appearance of defendants No.1 and 3 in the case proved the claim of the plaintiff as Defendants failed to lead any evidence to rebut the evidence produced by the plaintiff. Thus, no right can accrue in favour of



the appellant from the impugned Sale Deed as defendant No.1 had no right to execute Sale Deed in her favour.

47. Moreover, defendant No.2 did not prove that she was unaware about the existence of previous Agreement to Sell as she did not undertake proper inquiry from the locality. The appellant as DW7 has admitted in her cross-examination that she did not make any inquiry in respect of the suit land except from the Patwari at the time of purchasing the land. Even the documents (Ex.PW1/1 to Ex.PW1/3) have not been specifically denied by the appellant. In any event, admittedly, the appellant is resident of Rewari. As such, it is improbable that she would not have knowledge of the Agreement to Sell executed by defendant No.1 in favour of the plaintiff. Kamal Singh son of defendant No.1 is the Attesting Witness to the Agreement as well as to both the Writings on the Agreement. The appellant can also not deny knowledge of the execution of the Agreement in question as she has filed joint written statement with defendant No.3 who is daughter-in-law of defendant No.1; and Kamal Singh, husband of defendant No.3 is witness to the Agreement and both the Writings on the Agreement. Kamal Singh is also Attesting Witness to the Sale Deed (Mark B) executed by defendant No.1 in favour of defendant No.2. Thus, defendant no.2 cannot be held to be bona fide purchaser of suit land for valuable sale consideration without notice.



48. Further, there is no pleading that defendant No.1 appeared on the target date i.e. 18.10.2005 before the Sub-Registrar and it was the plaintiff who failed to appear with the balance sale consideration. Even there is no evidence that defendant No.1 had issued any notice to the plaintiff regarding repudiation of the Agreement to Sell. On the other hand, the plaintiff had got registered notice issued to defendant No.1 when he came to know that the prohibition for registration of Sale Deed was lifted on 29.06.2006. It is the clear categoric finding of fact of the learned Courts below that on the said date, the plaintiff appeared in the Office of Sub-Registrar, and it was the defendant who did not put in appearance.

49. Thus, keeping in view the entirety of the above-noted factual and legal position, the present Second Appeal stands **dismissed**.

50. Pending application(s) if any also stand(s) disposed of.

23.12.2025

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No