IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

215 **RSA-3199-2013 (O&M) with**
XOBJS-3-C-2014 (O&M)

Satish Kumar Saini **...Appellant(s)**

Vs.

Laxmi Devi and others **...Respondent(s)**

The date when the judgment is reserved:	10.12.2025
The date when the judgment is pronounced:	17.12.2025
The date when the judgment is uploaded on the website:	17.12.2025
Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced:	Full judgment

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Santosh Sharma and Mr. Varun Sandhu,
Advocate for the appellant.

Mr. D.V. Sharma, Senior Advocate with
Mr. Tushar Sharma, Advocate for the respondents.

NIDHI GUPTA, J.

CM-12808-C-2016

Prayer in the present application filed by the respondents under Section 151 of the Code of Civil Procedure, 1908 is for treating Cross Objection No.3/C of 2014 as Regular Second Appeal.

2. Ld. Senior Counsel for the applicants/ respondents/defendants refers to a judgment of Bombay High Court in

Damodhar Namdeo Sase v. Namdeo Baburao Sase, (Bombay) : Law Finder Doc Id # 195618; wherein it is held as under:-

> *"A. Civil Procedure Code, 1908, Order 41, Rule 33 - Appellant Court - Power under Rule 33 is discretionary - No rigid rule in this behalf can be laid down and it would depend upon fact of each case - Non-filing of cross-objections will not deter the Appellate Court from considering merits in respect of such a finding - Held, that the cross-appeal or cross objection is a procedural formality - Powers of Appellate Court are not circumscribed by the procedural requirement."*

3. Learned Senior Counsel for the defendants further refers to judgment passed by Hon'ble Supreme Court in **Banarsi v. Ram Phal, (SC) : Law Finder Doc Id # 560**; wherein it is held as under:-

> *"A. Civil Procedure Code, Order 41 Rules 22 and 23 - Cross objections - Cross appeal - Scope of - Just as an appeal is preferred by one who can be said to be aggrieved by the decree so also a cross objection is preferred by one who can be said to be aggrieved by the decree - A party who has fully succeeded in the suit can and needs to neither prefer an appeal nor take any cross-objection though certain findings may be against him - Appeal and cross-objection, both are filed against decree and not against judgment and certainly not against any finding recorded in a judgment."*

4. It is accordingly submitted that cross-objections/Regular Second Appeal filed by the respondents is very much maintainable.

5. Heard.

6. For the legal position and reasons noted above, the present application is allowed and the Cross Objection No.3/C of 2014 is treated as Regular Second Appeal.

CM-12809-C-2016

Prayer in the present application u/s 5 of the Limitation Act, 1963 is for condonation of 848 days delay in filing the appeal.

2. It is submitted by learned Senior Counsel for the applicant/respondents that the said delay in filing the Second Appeal has been occasioned on account of the fact that the applicants, under misapprehension and lack of clear advice, have initially filed Cross Objection No.3/C of 2014 before this Court. Accordingly, delay of 848 days has occurred in filing the Appeal.

3. Heard.

4. For the reasons mentioned in the application, which is duly supported by an Affidavit of applicant/respondent No.2, the same is allowed; and the delay of 848 days in filing the appeal is condoned.

CM-12626-C-2014

This is an application filed by the applicant/plaintiff under Order 41 Rule 27 read with Section 151 of CPC for placing on record judgment dated 04.04.2014 passed by the Additional Civil Judge (Senior Division), Pataudi District Gurgaon as Annexure A-2.

2. Heard.

3. For the reasons mentioned in the application, the same is allowed and judgment dated 04.04.2014 passed by the Additional Civil

Judge (Senior Division), Pataudi District Gurgaon is taken on record as Annexure A-2, subject to all just exceptions. Registry is directed to tag the same at appropriate place.

RSA-3199-2013 (O&M)

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the appellant for grant of specific performance of contract and permanent injunction, has been partly decreed by both the courts below for refund of earnest money.

2. Brief facts of the case are that the plaintiff had filed the present suit seeking specific performance of Agreement to Sell dated 23.06.2007 in respect of suit land measuring 5K 17M as described in the plaint. It was pleaded that the defendants/respondents are co-owners in possession of suit land. The defendants had sold the suit land to the plaintiff vide aforesaid Agreement to Sell dated 23.06.2007 for total sale consideration of Rs.9 lacs. At the time of execution of Agreement, plaintiff had paid Rs.3 lacs in cash as earnest money. The target date for execution of Sale Deed was set for 26.07.2007. It was pleaded that on 26.07.2007, plaintiff was present in the Tehsil office with 3 pay orders for balance sale consideration alongwith stamp and registration charges. However, the defendants had failed to put in appearance. Accordingly, plaintiff had served legal notice dated 31.07.2007 upon the defendants calling upon them to appear in the Tehsil office on the 2nd target date i.e. 20.08.2007. However, even on the said date, defendants had failed to put in

appearance; whereas plaintiff had duly marked his presence in the Tehsil office on 20.08.2007 also. Therefore, defendants had committed breach of contract deliberately with malafide intention. With these pleadings, present suit was filed on 19.09.2007.

3. Upon notice, defendants had resisted the suit by denying that the defendants had sold the suit property to plaintiff by way of Agreement to Sell dated 23.06.2007. It was denied that defendants had received earnest amount of Rs.3 lacs. A prayer for dismissal of the suit was made.

4. No replication was filed.

5. From the pleadings of the parties, following issues were framed by the learned Trial Court vie order dated 05.06.2008:-

> *"1. Whether the defendants entered into agreement to sell dated 23.06.2007 with the plaintiff?OPP*
>
> *2. Whether the plaintiff has been ready and willing to perform her part of contract? OPP.*
>
> *3. If issue No.1 and 2 are proved whether the plaintiff is entitled to specific performance of contract? OPP.*
>
> *4. Whether the suit is not maintainable in the present form? OPD.*
>
> *5. Whether the plaintiffs have no cause of action to file the present suit? OPD.*
>
> *6. Whether the plaintiffs have no locus standi to file the present suit? OPD.*
>
> *7. Whether the plaintiffs have not come to the court with clean hands? OPD.*
>
> *8. Whether the suit is not properly valued for the purposes of court fee and jurisdiction? OPD.*

9. Whether the plaintiffs is stopped from filing the present suit by their own acts, conducts? OPD.
10. Relief."

6. Upon appraisal of the pleadings and the evidence led by the parties, learned Trial Court had decided issue No.1 against the plaintiff; issue No.2 in favour of the plaintiff; issue No. 3 against the plaintiff; issues No. 4 to 9 against the defendants; and vide judgment and decree dated 31.05.2012 had held that ".....*Specific performance of the agreement to sell dated 26.03.2007 cannot be granted. However, a money decree in this case of Rs.3 lac directing the defendant to make payment of decretal amount to the plaintiff alongwith interest @ 10% per annum from the date of filing of the suit till decretal amount is paid. The costs is also granted to the plaintiff."*

7. Against the said judgment and decree dated 31.05.2012, the plaintiff had preferred Civil Appeal No. 56 dated 16.07.2012. The defendants had also filed cross-objections. Both, the Civil Appeal as well as the cross objections of the defendants were dismissed by the Additional District Judge, Gurgaon vide common judgment dated 15.04.2013. Hence, present Second Appeal by the plaintiff.

8. It may also be pointed out that initially the respondents/defendants No. 2 and 3, had filed cross-objections No.3-C-2014 dated 23.02.2014 before this Court praying for dismissal of the suit of the plaintiff. However, learned counsel for the appellant had raised objection that said cross-objections were not maintainable. Whereafter,

respondents had filed application bearing CM-12808-C-2016 under Section 151 of CPC for treating the cross-objections No.3-C of 2014 as Regular Second Appeal. The said application was filed alongwith CM-12809-C-2016 seeking condonation of delay of 848 days in filing the appeal. Both the said applications have been allowed hereinabove by this Court vide order of even date and it is directed that cross-objections No.3-C of 2014 is treated as Regular Second Appeal.

9. It is *inter alia* submitted by learned Senior Counsel for the appellant/plaintiff that the learned Trial Court had non-suited the appellant on the ground that the Agreement to Sell dated 23.06.2007 was not proved. However, contradictorily, learned Trial Court had also simultaneously given the finding that the plaintiff was ready and willing to perform the contract; and had accordingly directed refund of earnest money to the plaintiff. It is pointed out that in the Civil Appeal, the learned First Appellate Court had reversed the findings of the learned Trial Court and held that the appellant had proved the Agreement to Sell in question and even refund of earnest money was granted by the learned First Appellate Court. Ld. Additional District Judge had further held that readiness and willingness of the plaintiff to perform the contract was also proved. However, the First Appellate Court had declined to grant specific performance of the contract to the plaintiff only on the ground that defendants had already alienated the suit property to the subsequent purchaser namely Subhash son of Bhagwan Singh by virtue of Sale Deed dated 14.05.2007.

10. Learned Senior Counsel for the appellant contends that the said reasoning of the learned first Appellate Court was palpably erroneous as: the present defendant/respondents, had filed a civil suit against the said alleged vendee Subhash, seeking a declaration that they are absolute owners in possession of the present suit land; and that Sale Deed dated 14.05.2007 is illegal, null and void. The said civil suit was decreed in favour of the present respondents by the learned Additional Civil Judge (Senior Division), Pataudi, District Gurgaon vide ex parte judgment and decree dated 04.04.2014 (Annexure A-2), and Sale Deed dated 14.05.2007 was declared null and void. Learned Senior Counsel contends that therefore, the singular premise on which specific performance has been denied to the plaintiff by the learned First Appellate Court is rendered nugatory.

11. Learned Senior Counsel for the appellant further submits that the said findings of the learned First Appellate Court to the effect that the Agreement to Sell dated 23.06.2007 was proved in accordance with law; as also that the plaintiff had proved his readiness and willingness to perform the contract, were not challenged by the defendants before this Court in accordance with law. It is contended that it is only upon the objections raised by the appellant to the cross-objections filed by the respondents that the instant applications bearing No. CM-12808-C-2014 and CM-12809-C-2014 have been moved by the respondents. It is contended that therefore, the said findings of the learned First Appellate Court have attained finality, as the cross-objections of the respondents are

not maintainable and the purported Second Appeal of the respondents is barred by limitation.

12. It is also contended by learned Senior Counsel for the plaintiff that the defendants had alleged that fraud had been committed upon them by the plaintiff. As such, the onus is upon the defendants to prove the fraud. However, they had miserably failed to do so. As such, there was no reason for specific performance of contract to be denied to the appellant.

13. In support, learned Senior Counsel for the appellant refers to a judgment of this Court in **Surjit Singh v. Nanak Singh, (P&H) : Law Finder Doc Id # 161086**. The relevant para of the said judgment is as under:-

> *"12. The Lower Appellate Court has recorded a finding that the execution of agreement Ex.P1 has been duly proved from the statements of PW-1 Pawan Kumar, Deed Writer and PW-3 Ujjagar Singh, attesting witness. The Lower Appellate Court has also mentioned in the judgment that these witnesses were thoroughly cross-examined but nothing could be got elicited from them which would discredit their evidence. The plea of the appellant that the marginal witness has stated that agreement P-1 was handwritten whereas on record, a typed document has been proved as PW-1 and therefore, the same should have been discarded by the Courts below, is of no consequence in view of the fact that the defendant admitted his signatures on Ex.P1 produced in Court i.e. typed agreement Ex.P1 though he stated that the same were obtained when it was blank i.e. the plea, which he*

could not prove in support of his case. Learned counsel for the appellant has further argued that from the gap between the signatures and writing made, it is crystal clear that signatures of the defendant were obtained on blank stamp papers and later on it was typed and converted into agreement to sell. I have also perused the agreement to sell Ex.P1. There is nothing unusual in the writing of the said document and, seems to be typed by the Deed Writer in the ordinary course of his profession. The argument of the learned counsel is without any substance. It may be noted here that if the statement of Ujjagar Singh PW3 is read as a whole, he has clearly stated that Pawan Kumar, Deed Writer had scribed Ex.P1. The agreement to sell Ex.P1 was executed on 10.5.1995 whereas the statement of Ujjagar Singh, PW-3 who is aged about 84 years was recorded in the Court after a lapse of many years and therefore, such kind of minor discrepancies are bound to occur and the same is not significant in view of the fact that the appellant himself has admitted his signatures on Ex.P.1."

14. Learned Senior Counsel for the appellant further refers to a judgment passed by the Hon'ble Supreme Court in **Sughar Singh v. Hari Singh (SC) : Law Finder Doc Id # 1901166**, the relevant para is as under:-

"10. Now, so far as the finding recorded by the High Court and the observations made by the High court on Section 20 of the Act and the observation that even if the agreement is found to be duly executed and the plaintiff is found to be ready and willing to perform his part of the Agreement, grant of decree of specific performance is not automatic and it is a discretionary relief is concerned, the

same cannot be accepted and/or approved. In such a case, many a times it would be giving a premium to the dishonest conduct on the part of the defendant / executant of the agreement to sell. Even the discretion under Section 20 of the Act is required to be exercised judiciously, soundly and reasonably. The plaintiff cannot be punished by refusing the relief of specific performance despite the fact that the execution of the agreement to sell in his favour has been established and proved and that he is found to be always ready and willing to perform his part of the contract. Not to grant the decree of specific performance despite the execution of the agreement to sell is proved; part sale consideration is proved and the plaintiff is always ready and willing to perform his part of the contract would encourage the dishonesty. In such a situation, the balance should tilt in favour of the plaintiff rather than in favour of the defendant - executant of the agreement to sell, while exercising the discretion judiciously.

For the aforesaid, even amendment to the Specific Relief Act, 1963 by which section 10(a) has been inserted, though may not be applicable retrospectively but can be a guide on the discretionary relief. Now the legislature has also thought it to insert Section 10(a) and now the specific performance is no longer a discretionary relief. As such the question whether the said provision would be applicable retrospectively or not and/or should be made applicable to all pending proceedings including appeals is kept open. However, at the same time, as observed hereinabove, the same can be a guide.

10.1 Even otherwise it is required to be noted that as such on applicability of Section 20 of the Act, no issue was *framed either by the learned Trial Court or by the learned First Appellate Court or even by the High Court. The same has been dealt with by the High Court for the first time in a Second Appeal under section 100 of the CPC. Even otherwise no cogent reasons have been given as to why the decree of specific performance shall not be passed in favour of the plaintiff."*

15. It is accordingly prayed that the present Appeal be allowed; and the suit of the plaintiff be decreed.

16. *Per contra,* learned Senior Counsel appearing on behalf of the respondents/defendants vehemently opposes submissions advanced on behalf of the appellant and submits that in actual fact, the appellant is a Property Dealer. This fact has been admitted by the plaintiff and plaintiff's witnesses themselves. Learned Senior Counsel contends that the plaintiff being a Property Dealer was very well aware that the husbands of defendants No.1 and 2 had expired and that the defendants were helpless ladies and had therefore, played fraud upon them. As such, plaintiff has taken advantage of the defendants who are widows. Their husband/father had passed away and the land in dispute was mutated in their names. Satpal, brother-in-law (Jija) of the plaintiff was working in the Press of maternal uncle of Defendants No. 2 and 3 and brother of Defendant No. 1. Plaintiff belonged to Farukhnagar. Since the defendants were ladies, they asked Satpal to see as to where their land is situated. He told them that his brother-in-law/plaintiff is from Farukhnagar and he will ask him. Therefore, Plaintiff came and told the defendants that their land had

already been sold and in order to obtain the documents, he needs the signatures of the defendants. It is pointed out that Plaintiff is a property dealer, and the Court must be extremely cautious.

17. It is submitted that believing him in good faith, one blank paper was signed by the defendants. It is submitted that the plaintiff had converted the blank papers into an Agreement to Sell, which was never executed by the defendants. It is argued that had there been any Agreement, then the defendants would have signed all the three pages of the Agreement. Crucially, the first two pages of the agreement do not bear the signatures of the defendants, and page 3 of the Agreement clearly shows that it has been typed on blank paper. Therefore, the alleged agreement to sell dated 23.06.2007, relied upon by the plaintiff, is forged, fabricated and manufactured. It is submitted that therefore, the respondents, who are helpless women, have been duped into entering into the fraudulent Agreement. It is submitted that it was never the intention of the respondents to sell the suit land.

18. It is further submitted that the Agreement itself cannot be held to be proven in accordance with law as a bare perusal thereof shows the same to be a fraudulent document which has been obtained by the plaintiff from the defendants, who were helpless ladies, by fraudulent means. Learned Senior Counsel points out that even in the written statement the clear stand of defendants was that signatures of the defendants had been taken on the blank papers. In this regard, learned Senior Counsel take this Court through the Lower Court record referring to

various details of Agreement in question and other documentary evidence to substantiate the said argument. It is contended that the said fraud is made out from the fact that even at the time of filing the suit, suit land was worth Rs.50 lacs. As such, there is no reason as to why the defendants would sell the valuable suit land to the plaintiff for meagre amount of Rs.9 lacs. Accordingly, the consistent stand of the respondents has been that they had never entered into an Agreement to sell the suit land with the plaintiff. Moreover, even no receipt was issued in respect of Rs.3 lacs allegedly received by the defendants by way of earnest money. Learned Senior Counsel contends that if the plaintiff had in actual fact paid handsome amount of Rs.3 lacs as earnest money, it is but trite that he would have demanded receipt as a proof of payment. However, no such receipt has been produced by the plaintiff to prove the said alleged payment. Moreover, even the stamp papers have not been purchased by the respondents; and appellant has not examined any stamp vendor.

19. Learned Senior Counsel also pointed out that it is the stand of the plaintiff that the Agreement to Sell was a formatted print typed document, which had been signed by the respondents. It is submitted that the attesting witnesses have stated in their testimonies that the columns in respect of sale consideration, earnest money and target date etc., were blank, which were filled in by the husband of defendant No.3. However, no evidence has been led by the appellant to prove the said facts. Moreover, the said facts have not been mentioned by the appellant himself in his examination-in-chief Ex.PW1/A.

20. At this stage, learned Senior Counsel for the appellant interjects and submits that the fact that blank columns in the Agreement were filled in by the husband of defendant No.3 does not find mention in Ex.PW1/A as, it was only in cross-examination of the plaintiff that the said question was put to him by the defendants, upon which the plaintiff had clarified that said columns were filled by the husband of defendant No.3. This assertion of the learned Senior Counsel for the appellant is strongly rebutted by learned Senior Counsel for the respondents by referring to page 167 of the LCR, which is cross-examination of the plaintiff as PW1; wherein the plaintiff has voluntarily himself submitted that the blank columns were filled in by the "son-in-law of Lachmi Devi" *"khud kaha ki ye Agreement Lachmi Devi ke damad ne bhara tha".*

21. Lastly, it is submitted by learned Senior Counsel for the respondents that in his suit, plaintiff had not sought alternative relief of refund of earnest money. It is submitted that in the absence of specific prayer by the plaintiff seeking alternative relief of earnest money, the same could not have been granted to him by both the Courts below.

22. Learned Senior Counsel for the appellant rebuts the above submissions of the respondents and refers to the written statement filed by the respondents before the Trial Court; wherein in para 1 of the preliminary objections, respondents have admitted that they had signed upon the typed Agreement. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

23. No other argument is raised on behalf of the parties. I have heard learned Senior counsel for the parties and perused the case file alongwith Lower Court Record in minute detail. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties; and my findings on each issue are as follows:

AGREEMENT TO SELL:

It is the case of the respondents/defendants that the Agreement to Sell was obtained fraudulently by the plaintiff. Although the said stand of the respondents has been vehemently opposed by the learned Senior Counsel for the appellant, however, a perusal of the Agreement to Sell dated 23.06.2007 Ex.P1 (<u>at pages 97 to 101 of the LCR)</u> does not inspire the confidence of this Court; for the reason that admittedly, pages 1 and 2 of the Agreement in question do not bear the signatures of the defendants or the plaintiff. Page 2 of the Agreement contains the most important terms and conditions of the Agreement - such as the total sale consideration, earnest money paid, date of execution of Sale Deed et cetera, which have not been signed by either party. Thus, every important condition of the Agreement, which is borne on page 2 of the said Agreement, does not bear the signatures of either party. It cannot therefore be said that the defendants have affirmed the said terms and conditions of the Agreement. What is more, there is overwriting/interpolation on the date of execution of sale deed at Mark A-4 which does not bear the signatures of the parties.

24. Furthermore, on page 3 of the Agreement (<u>at page 101 of the LCR),</u> the names of the attesting witnesses of the Agreement namely, Raj

Singh and Arun Kumar, have not been typed, and have been written by hand. Besides this, if the witnesses PW2 and PW3 would have been present at the time of execution of the Agreement, then the names and addresses of the said witnesses would also have been typed instead of writing by hand. Even the date of the Agreement has not been typed and has been written by hand at page 3 of the Agreement. The names of the defendants are far spaced. It would therefore appear that the typing on page 3 has been made in such a way by giving more spaces so as to adjust the signatures obtained on the blank paper. Even further, a perusal of signatures of defendant No.3 as borne on the written statement (<u>at page 79 of the LCR)</u> and as borne on the Agreement to Sell (<u>at page 101 of the LCR)</u> shows that there is a stark difference in the two signatures of defendant No.3 which is visible to the naked eye.

25. Plaintiff has also been unable to give any explanation that if the entire Agreement already stood typed then what prevented the plaintiff from filling in the important conditions of the Agreement such as, total sale consideration, earnest money, target date and date of Agreement, at the time of typing of the Agreement itself. Furthermore, there is no rebuttal/rejoinder to the specific assertion of the defendants in their written statement (<u>at pages 69 to 79 of the LCR)</u> that in 2007 itself, suit land was worth Rs.50 lacs. No reason has been given by the plaintiff as to what would constrain the defendants for selling valuable suit land worth Rs.50 lacs to the plaintiff for a meagre amount of Rs.9 lacs only. Plaintiff has not even pleaded that the defendants were facing any financial necessity to

constrain them to sell the suit land at 1/4 the price. All these factors put together, cast grave shadow of doubt upon the authenticity of the Agreement in question.

26. In these circumstances, reference is apposite to recent judgment of the Hon'ble Supreme Court in **Lakha Singh v. Balwinder Singh (SC) : Law Finder Doc Id # 2649307 D/D: 27.9.2024,** wherein it is held that:

> *"27. At this stage, a very crucial fact which is noticeable from the disputed agreement needs to be highlighted. It is not in dispute that the stamp papers were not purchased by the appellant-defendant and rather Amarjeet Singh was the person who purchased the same. The document was typed out in Gurmukhi language and the photostat copy thereof is available on record. A visual overview of the disputed agreement would show that it runs into three pages. The signature of the respondent-plaintiff, and the thumb impression of the appellant-defendant are marked only on the last page thereof. The first and second pages of the agreement, do not bear the signature of the respondent-plaintiff or the thumb impression of the appellant-defendant. There exist significant blank spaces at the foot of the first two pages below the transcription typed out on these two pages. These observations give rise to a strong inference fortifying the contention of the appellant-defendant's counsel that the thumb impression of the appellant-defendant may have been taken on a blank stamp paper and the disputed agreement was typed thereon subsequently."*

27. In the present case as well, the stamp papers were not purchased by the defendants. Similarly, even in the present case,

Agreement in question consists of three pages, and only the last page bears signatures. First two pages were blank at the time of signing. Columns on the first 2 pages were left blank and filled in later on by hand. The Hon'ble Supreme Court has held that where the first two pages of an Agreement do not bear the signatures/thumb impressions of the sellers and only the last page is signed, a strong inference of fraud arises. Hon'ble Supreme Court held that signatures on the last page of a blank stamp paper may have been taken and contents typed later. The absence of signatures on previous pages is fatal to genuineness of the Agreement. Thus, present case squarely falls within the ratio of **Lakha Singh supra.**

28. It was taking into account these facts, that the learned Trial Court had correctly held that the Agreement to Sell was not proved in accordance with law. Relevant findings of the learned Trial Court contained in para 15 of the judgment dated 31.05.2012 read as follows: -

> *"15. One thing is that evident from the above discussed evidence that the plaintiff admits that he is into purchase and sell of property. The agreement Ex.P.1 there is 3 pages and first and second pages have not been signed by the parties and only the last page was signed by defendant and also by the plaintiff. Ex.P.1 is the typed document but the suggestions have been filled subsequently regarding total consideration and amount of earnest money paid and regarding the date of execution of the sale deed the norms of the witnesses have been filled. Thereafter, one thing is clear that till the time of agreement Ex.P.1 was typed by plaintiff the terms and conditions between plaintiff and defendant have not been settled. Since in case the said terms and conditions have been settled the same would*

have been incorporated in the agreement when the agreement was got typed. Even plaintiff has been into business of sell and purchase of property, it was accepted by him to get all the pages signed from the defendants. The second page of the agreement has cutting at place A.4 which was the date for execution of the sale deed since 26.07.2006 has been altered as 26.07.2007. in the same manner since signatures of witnesses Raj Singh and Arun Kumar at places marked at A and A.3 on the third pages of the agreement have been put subsequently the same creates reasonable suspicion in the mind of the court that these witnesses were not present at the time of the alleged agreement to sell was executed between the parties. The court can infer from Ex.P1 that the terms and conditions were not know to the defendants since fist two paged in agreement to sell Ex.P.1 did not appear the signatures of the proposed vendors and proposed vendees. After these circumstances it cannot said that there was proper meetings of the mind of the parties to execute of the agreement to sell since the terms and conditions is not certain and even otherwise also the first two pages of Ex.P.1 was not got signed by plaintiff from the defendants."

29. On the contrary, learned First Appellate Court has ignored the above said findings; and has held that the Agreement stood proved as the "eyewitness" Raj Singh and Arun Kumar had been examined. However, in holding as above, First Appellate Court failed to appreciate the above noted facts; as also the fact that neither the Scribe nor the stamp vendor were examined by the plaintiff. The spurious grounds on which the first Appellate Court has partly decreed the suit of the plaintiff are contained in paras 13

and 14 of the judgment dated 15.04.2013, the relevant extract of which are reproduced as under:-

> *"13. ……… Both the eyewitnesses Raj Singh and Arun Kumar while appearing in the witness box as PW2 and PW3 corroborated the statement of PW1. They have testified that the agreement to sell Ex.P1 was executed by the defendants No.1 to 3 voluntarily in their presence whereby they agreed to sell the suit property in favour of the plaintiff on receiving earnest money to the tune of Rs.3 lacs. They have specifically deposed that the vendors as well as the vendee appended their signatures on the agreement in their presence. All the three witnesses have been cross-examined by learned counsel for the defendants at length but no purpose has been served as he failed to impeach their credit worthiness. Obviously, the attesting witnesses are not beneficiaries to the alleged transaction nor they had any previous enmity with the defendants. So there were no chances that they would have deposed falsely.*
>
> *14. The execution of the agreement cannot be rendered in doubt mere on the basis that first two of its pages do not bear the signatures of the vendors. <u>The plaintiff has specifically stated that the blank part of the agreement was even filled by the husband of one of the vendors.</u> There is no such denial, DW1 in her cross-examination has admitted that she is MA., B.Ed, whereas her sister co-vendor is B.Com. She has stated that vendors know Hindi. There are no allegations that they were forced to sign the agreement or that their signatures were obtained on third page of the agreement by misrepresentation. It is not explained if they were not conversant with the contents of pages No.1 and 2 of the agreement than what was the compulsion for them to sign*

> *even third page. It is settled law that when a document is admitted to bear signature burden of proof shifts upon the person alleging the execution nugatory. ……… As already stated above, in the case in hand, there is no material to show that the attesting witnesses had any reason to depose against the defendants/vendors falsely. Therefore, the findings of learned lower court on issue No.1 are not correct."* (Emphasis added)

30. However, the abovesaid reasoning of the learned First Appellate Court is palpably erroneous and the learned Court has erred in holding that the Agreement stood proved from the evidence of the attesting witnesses. In holding as above, the learned first Appellate Court has ignored the fact that attesting witness PW2 Raj Singh has admitted in his cross-examination (<u>at page 177 of the LCR</u>), that he knows the plaintiff for the past 12-15 years and that plaintiff resides in nearby village of PW2. Similarly, attesting witness PW3 Arun Kumar has also admitted in his cross-examination (<u>at page 185 of the LCR)</u> that the Agreement was not typed in his presence; that the plaintiff had got typed the said Agreement and brought it to PW3; that on the Agreement brought by the plaintiff PW3 had given his 'gawahi'/witness; that Rs.3 lacs were given in his presence that he knows the plaintiff for the past 10-12 years; that the plaintiff is a Property Dealer. However, all this evidence has been ignored by the learned first Appellate Court.

31. It is also my clear view that the learned first Appellate Court was in error in holding that merely because the first two pages of the Agreement were not signed, would not render the Agreement doubtful. As

already discussed above, the first two pages, especially the second page contains the essential conditions of the Agreement. As such, it was imperative that the said pages be also signed by the parties especially the defendants. The fact that it is not so, would definitely cast shadow of doubt on the Agreement. As also discussed above, there is discrepancy in the signature of defendant No.3. Furthermore, the plaintiff has also been unable to substantiate his allegation that the crucial conditions of the Agreement such as total sale consideration amount, earnest amount, et cetera were filled by brother-in-law of the defendants. All these facts give rise to the suspicion that the Agreement to Sell is not a genuine document and has been fraudulently obtained by the plaintiff. Thus, it is my clear view that the learned First Appellate Court was incorrect in holding that the Agreement stood proved in accordance with law.

32. Even if the Agreement was a pre-typed Agreement, it is clear that Signatures of the defendants were obtained on blank Agreement as evident from Ex.P-1. The first Appellate Court has also erred in not noticing that on page 2 of the Agreement the date of execution of the sale deed has been changed from 26.07.2006 to 26.07.2007 (at Mark A-4) and the cutting does not bear the signatures of the Defendants.

33. It is but right that once the whole Agreement is typed, why would date of registration of sale deed, be not typed. There was no question of not typing the amount of Rs.9 lakh of the sale consideration; or the amount of Rs.3 lakhs of the earnest money; or the last date for execution of the Agreement also to be not typed; or even the date on

which the Agreement itself was executed was also not typed as is evident from Ex. P-1 (Mark A-1) in circle. The stamp paper on which the Agreement had been typed was not purchased by the Defendants. Thus, the Agreement to Sell when read in it's entirety, is highly suspicious, and does not inspire the confidence of this Court at all. Such an Agreement bearing such glaring, inexplicable deficiencies, cannot be enforced.

34. The alleged Agreement is also suspicious, unconscionable, inequitable and unenforceable as Property worth Rs. 50 lakhs was allegedly agreed to be sold for only Rs. 9 lakhs. Courts do not enforce such bargains. It is not denied by the plaintiff that the suit property was worth ₹50 lakhs at the time of execution of the Agreement. Even no explanation is given as to why the defendant would sell such valuable suit property for such a paltry amount. It is not the case of the plaintiff that the defendants had any financial difficulties due to which they were constrained to sell the property at such meagre price.

35. Last but not the least, it has nowhere been mentioned in the Agreement that a copy of the Agreement was duly given to the Defendants so that they could have known about the execution of the Agreement; as also nothing has been mentioned in the plaint that a copy of the Agreement was given or retained by Defendants.

36. Argument of learned Senior Counsel for the appellant that if fraud was alleged by the defendants, then the same had to be proved by them, is also liable to be rejected as, the onus to prove Issue no.1 viz "*1. Whether the defendants entered into agreement to sell dated 23.06.2007*

with the plaintiff?OPP", was upon the plaintiff. As seen above, the plaintiff himself has failed to prove the Agreement in question. The First Appellate Court has erroneously reversed the finding of the Ld. Trial Court on issue No. 1 regarding execution of the Agreement without addressing or considering the factum of the absence of signatures on the first two pages, and material alterations in the Agreement.

37. As regards **<u>readiness and willingness</u>** of the plaintiff to perform contract, no doubt plaintiff has produced his Affidavit of Attendance Ex.P3; whereby plaintiff had got marked his presence before the Sub Registrar on 26.7.2007. Plaintiff had also shown availability of balance sale consideration by way of 3 pay orders of Rs.2 lacs each Ex.P4 to Ex.P6. However, the fact that the plaintiff was ready and willing to perform the contract, would not be of any help to the plaintiff as the plaintiff has failed to prove the Agreement dated 23.6.2007 in accordance with law.

38. Further, I also find merit in the argument of learned Senior Counsel for the respondents that in the absence of specific prayer of refund of earnest money, no such relief could have been granted to the plaintiff. Perusal of the plaint (<u>at page 51 to 67 of the LCR)</u> shows that in the prayer clause, plaintiff has made following prayer:-

> *"The plaintiff, therefore, prays that a decree for specific performance of contract of sale dated 23.06.2007 in respect of the land in suit mentioned in para No. 1 of the plaint above, directing the defendants to execute and register the sale deed in favour of the plaintiff in respect of the suit land mentioned in para No. 1 of the plaint above after receipt of the balance sale*

consideration in favour of the plaintiff and if, the defendants fails to execute and got registered the sale deed in favour of the plaintiff then the same be got executed and registered through process of law along with a further decree for permanent injunction restraining the defendants, their authorized agents, representatives and attorneys from further alienating, transferring, mortgaging or leasing out the suit land to any one else accept the plaintiff or his nominee(s) may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit."

39. Clearly therefore, no prayer for alternative relief of refund of earnest money has been made. In the absence of such prayer, no such relief could have been granted to the plaintiff. Even otherwise, plaintiff has produced no proof that such payment was made by him. It is the own case of the plaintiff that the said alleged payment was made in cash. As per law, such an amount cannot be paid in cash; as any cash payment beyond ₹2 lakhs, has to be explained. Plaintiff has produced no evidence to show the source of the said ₹3 lakhs. Even no receipt has been produced by the plaintiff to prove the payment. The plaintiff, being a property dealer, was bound to get receipt if any such payment had been made. In such a situation, plaintiff is not entitled to grant of relief of refund of earnest money.

40. Furthermore, vide judgment dated 04.04.2014 (Annexure A-2) passed by the learned Additional Civil Judge (Senior Division), Pataudi, District Gurgaon, respondents have been declared owners of the suit

property and Sale Deed dated 14.05.2007 has been held to be null and void. However, again the same will not be of help to the appellant as it is the clear view of this Court that instant Agreement to Sell dated 23.06.2007 is not a genuine document and can therefore, not be enforced.

41. In view of the above noted factual and legal position, the present Regular Second Appeal 3199 of 2013, is hereby **dismissed**; and the Cross Objections/ Cross Appeal filed by the respondents, stands **allowed**.

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

17.12.2025 **(NIDHI GUPTA)**
Divyanshi **JUDGE**

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