



**226 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-5710-2016 (O&M)

Date of decision : 16.01.2025

Sh. Arjun Singh (Deceased) through his Lrs

...Appellant

Vs.

**Sh. Mohinder Singh (Deceased) through his Lrs
and others**

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arun Kaundal, Advocate
for the appellant.

Ms. Avin Kaur Sandhu, Advocate
for respondent No.1.

ANIL KSHETARPAL, J. (Oral)

1. This is defendant's regular second appeal to impugn the First Appellate Court's judgment which in turn has reversed the judgment and decree passed by the trial Court.

2. On 30.07.1998, the plaintiff-Sh.Mohinder Singh son of Sh. Anokh Singh filed a suit for possession by way of specific performance of the contract dated 06.06.1996. The defendant contested the suit claiming that there was no agreement to sell executed between the parties. It was submitted that Sh. Ram Singh brother of defendant-Sh. Arjun Singh had taken loan from the plaintiff and Sh. Arjun Singh stood guarantee for his brother. Later on, the said loan was returned to the plaintiff by Sh. Ram Singh, however, taking undue advantages of Sh. Arjun Singh's illiteracy, the plaintiff prepared some false documents.



3. As per agreement to sell, the sale deed was to be executed and registered on 05.06.1998. In order to prove the case, the plaintiff examined Sh. Nirmal Singh son of Sh. Mohinder Singh (plaintiff), PW-2, Sh. Jasbir Singh son of Sh. Mohinder Singh (attesting witness), PW-3, Sh. Amandeep Singh son of Sh. Darbara Singh (attesting witness). The defendant examined Sh. Sohan Singh who claims to be son of Sh. Bahadur Singh, whereas, Sh. Bahadur Singh claims to be nephew of Sh. Arjun Singh.

4. The trial Court dismissed the suit, however, the First Appellate Court upon re-appreciation of evidence reversed the judgment of the trial Court and decreed the plaintiff's suit.

5. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

6. Learned counsel representing the appellant submits that execution of the agreement to sell has not been proved because none of the witness knows the contents of the agreement. He submits that children of both the attesting witnesses were examined who only proved the signatures of their respective fathers. However, they failed to prove the contents thereof.

7. This Court has considered the submissions made by the learned counsel representing the parties.

8. As already noticed, Sh. Mohinder Singh (plaintiff) died during the pendency of the suit and his son Sh. Nirmal Singh appeared as PW-1. Similarly, during the pendency of the suit both the attesting witnesses, Sh. Mohinder Singh and Sh. Dalbara Singh died. Their respective children, namely, Sh. Jasbir Singh and Sh. Amandeep Singh were examined, who

identified the signatures of their respective fathers. The defendant-Sh. Arjun Singh also died during the pendency of the suit. His three brothers were brought on record as legal representatives, however, none of them appeared in evidence. Sh. Bahadur Singh, alleged nephew of Sh. Arjun Singh was impleaded as legal representative alongwith brothers of Sh. Arjun Singh, who also died. Sh. Sohan Singh, father of Sh. Harbans Singh only appeared in evidence. As it is evident that the defendant-Sh. Arjun Singh admitted his thumb impression, however, he claimed that these were taken by misrepresentation but he failed to lead any evidence in this regard. Once, the thumb impressions’ on the written agreement to sell are admitted, the onus shifts on the defendants to prove that the thumb impression was taken by misrepresentation, however, no evidence to support that fact has been led.

9. Hence, no ground to interfere is made out.
10. The appeal stands dismissed.
11. All the pending miscellaneous applications, if any, are also disposed of.

16.01.2025
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No