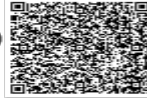
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****222****RSA-4327-2015 (O&M)****Date of decision: 11.11.2025****Ajit Arora****...Appellant(s)****Vs.****Rajinder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Aditya Dassaur, Advocate for the appellant.
Mr. Jagram Singh Cooner, Advocate for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the plaintiff against the concurrent judgments and decrees of the Id. Courts below, whereby suit filed by the appellant for possession by way of specific performance of Agreement to Sell dated 16.09.2005 in respect of suit land measuring 21 bigas 10 biswas as described in the plaint; and consequential relief of permanent injunction restraining the defendants from selling, alienating et cetera, has been dismissed by both the Courts below qua grant of decree of specific performance. However, suit for alternative relief of recovery of amount of Rs.6,98,750/- along with interest thereupon, has been allowed.

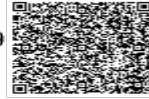
2. The pleaded case of the plaintiff was that the defendant is owner in possession of suit property measuring 21 bighas 10 biswas. He had agreed to sell the suit land to the plaintiff vide Agreement to Sell dated 16.09.2005 @ Rs.13 lacs per killa i.e. for total sale consideration of



Rs.69,87,500/-. Of the said amount, defendant had received earnest money of Rs.6,98,750/- from the plaintiff vide cheque dated 16.09.2005 itself. Prior to that, defendant had also received an amount of Rs.41,667/- as token amount on 03.09.2005. The target date for execution of Sale Deed was 30.06.2006. It is further averred that land of defendant was pledged with the Bank and defendant had undertaken to get the same redeemed from the bank before the target date. When the suit land was not got redeemed by the defendant, the plaintiff had sent a letter dated 12.06.2006 under registered cover asking the defendant to get it redeemed. Instead, the defendant had sent a letter to the plaintiff on false facts. On target date of 30.06.2006, plaintiff had gone to the office of Sub Registrar, Rajpura for execution of Sale Deed but the defendant did not turn up. Plaintiff had got his presence duly marked by way of affidavit. It was averred that plaintiff was always willing and ready to perform his part of contract. With these pleadings, present suit was filed on 19.07.2006.

3. Upon appraisal of the pleadings and the evidence led by the parties, vide judgment and decree dated 07.10.2013, the learned Trial Court had dismissed the suit of the plaintiff for specific performance with costs; however, *“the suit of the plaintiff for alternative relief of recovery of amount of Rs. 6,98,750/- is hereby allowed and the plaintiff is entitled to recover the amount of Rs.6,98,750/- from the defendant with interest @ 12% per annum from the date of cheque ie. 16-9-2005 till the date of decree and further 6% per annum from the date of decree till realisation.”*

The Civil appeal filed by the plaintiff was also dismissed by the learned

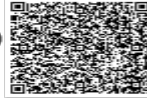


Additional District Judge, Patiala vide judgment and decree dated 08.04.2015. Hence, the present second appeal by the plaintiff.

4. It is *inter alia* submitted by learned counsel for the appellant that learned Courts below were in patent error in denying the relief of specific performance of contract to the appellant as they failed to appreciate that the appellant had duly proved the Agreement to Sell dated 16.09.2005. Appellant had also proved his readiness and willingness to perform the contract by producing Affidavit of Attendance in the Tehsil office. It is accordingly submitted that relief of specific performance could not have been denied to the appellant.

5. It is further submitted that it was the defendant who had failed to get the suit land redeemed from the mortgage. Therefore, it was clearly proved on record that it was the defendant who was not ready and willing to perform the contract. Again, in such a situation, plaintiff could not have been denied relief of specific performance.

6. Learned counsel for the appellant further submits that the Agreement dated 05.08.2005 which the defendant has put forward, as having been executed in favour of DW 4, Jaipal, is clearly an act of fraud. It is admitted by DW4 that he is a property dealer and that the sale deed in pursuance to agreement dated 05.08.2005 had not been executed and even the time had not been extended. It is thus clear that this agreement was a created Sham transaction to create an excuse / defence with a view to defeat the rights of the plaintiff. DW4 has also said in cross examination that the defendant had told him about the agreement with the plaintiff. It

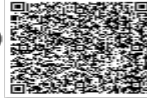


is submitted that if the agreement with DW4 was prior in time and there was no extension or execution of that agreement, where was the occasion for the defendant to tell this witness about the agreement with the plaintiff.

7. It is further submitted by learned counsel for the appellant that the Id. Courts have wrongly held that as the stamp papers were not purchased by the defendant, this fact creates a doubt over the execution of the agreement. It is submitted that a perusal of the stamp papers would show that the same are purchased in the name of the defendant through one Karam Singh. This Karam Singh, it is learnt, is a relative of the defendant. Moreover, it is common knowledge that practically most people do not go themselves to purchase stamp papers and even a representative can go to purchase the same on behalf of some one else.

8. Learned counsel for the appellant further submits that the observation of the learned Courts that the agreement in question is typed whereas some portions are filled in hand, making the agreement doubtful, does not hold much water as it is a matter of practical experience that agreements are got typed from the scribes by giving them particulars about the land and parties to the agreement whereas the details regarding payment etc. are usually filled up later on.

9. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside and suit of the appellant/plaintiff be decreed as prayed for.

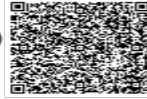


10. *Per contra*, learned counsel for the respondent opposes submissions made on behalf of the appellant and submits that the appellant had miserably failed to prove the Agreement to Sell on record. It is submitted that the total land owned by defendant was 21 bighas and 10 biswas. It is argued that when the defendant had admittedly already entered into an Agreement to Sell dated 05.08.2005 with Jaipal for land measuring 10 bigha 15 biswas then how could the defendant enter into an Agreement regarding 21 bighas and 10 biswas with the present plaintiff.

11. Learned counsel for the appellant/plaintiff counters the above submission of the defendant/respondent by submitting that an Agreement to Sell does not confer title. As such, defendant was not encumbered in any manner by way of Agreement to Sell dated 05.08.2005 in executing the Sale Deed in favour of the present plaintiff, especially in view of the fact that the said Jai Pal had not filed any civil suit seeking specific performance of Agreement to Sell dated 05.08.2005. It is accordingly prayed by learned counsel for the appellant that suit of the plaintiff be decreed in toto.

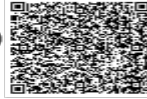
12. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellant.

13. It has been contended on behalf of the appellant that Agreement to Sell dated 16.09.2005 Ex.P3 stood duly proved on record. However, the said contention of the appellant is belied by the facts and findings on record. The said Agreement to Sell dated 16.09.2005 Ex.P3



cannot be held to be proved as, admittedly, plaintiff had failed to examine both the marginal witnesses of the Agreement Ex.P3. Plaintiff has also failed to examine Scribe of the said Agreement Ex.P3. Perusal of the Agreement Ex.P3 also shows that stamp papers were not purchased by the defendant but were purchased by one Karamjit. Plaintiff has failed to explain who Karamjit was; and also failed to examine him to prove the due execution of Agreement to Sell Ex.P3. Even further, Agreement does not bear the signature of the defendant on the first and second page of the Agreement. Signature of the defendant is only on the 3rd page of the Agreement dated 16.09.2005 Ex.P3. Even further, the names and address of witnesses, cheque No., name of Bank and other such details are handwritten on the said Agreement; whereas the remaining details of the Agreement have been typed. Argument of the plaintiff that this does not constitute a defect in the Agreement as it is normal practice, is incorrect and misplaced. Thus, by no stretch of imagination can it be held that the Agreement in question was proved in accordance with law.

14. It has further been contended on behalf of the plaintiff that he had paid token amount of Rs.41,667/- as *Sai* Ex.P2 to the defendant on 03.09.2005. However, perusal of Ex.P2 shows that again, it does not bear the signature of the defendant. Only the name of the witness Narinder Singh had been mentioned on Ex.P2. No details such as name of father etc. have been mentioned. Moreover, there is cutting on the date mentioned in Ex.P2. Ex.P2 has also not been proved as the said alleged witness Narinder Singh of Receipt Ex.P2 has not been examined by the



plaintiff. Even further in Ex.P3, nothing has been mentioned regarding Ex.P2. Nothing has also been mentioned in respect of amount of Rs.41,667/- allegedly received by defendant from the appellant as *Sai* by way of Ex.P2 in Ex.P3. Needless to say, the onus was upon the plaintiff to prove Ex.P2 and Ex.P3 by leading cogent evidence. However, plaintiff has miserably failed to do so.

15. On the other hand, defendant by way of oral as well as documentary evidence has duly proved on record the execution of Agreement to sell dated 05.08.2005 Ex.D1 executed by defendant in favour of Jai Pal Singh; which is prior to the present alleged Agreement dated 16.09.2005 Ex.P3 in respect of land measuring 10 bighas 15 biswas.

16. Argument of the plaintiff in stating that plaintiff had obtained signatures of the defendant on blank papers and therefore, it is to be inferred that defendant had admitted his signatures; and therefore, onus was upon the defendant to prove fraud in terms of Order 6 Rule 4 CPC is far-fetched, and liable to be rejected. In fact, the stand of the defendant that plaintiff had obtained his signatures on blank papers is proved from the fact that the Agreement is signed by the defendant only on the third page, and not on the first and second pages. In any event, suit of the plaintiff has to stand on its own legs. Plaintiff cannot seek to derive any benefit from any weakness in the case as put up by the defendant.

17. From the facts enumerated above, it is clear that the plaintiff had failed to prove Agreement to Sell itself. Moreover, plaintiff had only produced his Affidavit of Attendance Ex.P9 in respect of his presence in



the office of the Sub Registrar on target date. However, there is nothing to show that plaintiff was in possession of the balance sale consideration on the said date. As such, in terms of judgment of the Hon’ble Supreme Court in **R.Shama Naik vs. G.Srinivasiah (SC): Law Finder Doc Id # 2670489**, readiness, and willingness of the plaintiff was not proved as there was nothing on record to indicate that the plaintiff was in possession of the balance sale consideration. Mere presence of the plaintiff in the office of Sub Registrar would not establish his readiness and willingness.

18. Defendant has admitted in his written statement that he had received amount of Rs.6,98,750/- through cheque from the plaintiff. Therefore, the suit of the plaintiff was correctly allowed for alternative relief of recovery of said amount.

19. In view of the above facts, present Regular Second Appeal is hereby **dismissed**.

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

11.11.2025

Divyanshi

(NIDHI GUPTA)
JUDGE

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