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

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**RSA-4571-2015 (O&M)
Date of decision :10.09.2025**

BALWANT RAI THROUGH LRS MANOJ KUMAR AND ORS

... APPELLANTS

VERSUS

RAMESH KUMAR AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Suresh Kumar Aneja, Advocate
for the appellants.

Mr. C.M. Munjal, Advocate
for respondent No.2.

PARMOD GOYAL, J. (ORAL)

Present appeal has been preferred by the unsuccessful plaintiffs whose suit was partly decreed by the learned Additional Civil Judge (Senior Division), Jalalabad (West), against defendant no.1 alone vide judgment and decree dated 04.07.2013, and whose first appeal was also dismissed by the learned Additional District Judge, Fazilka vide judgment and decree dated 07.11.2014.

2. The case of the plaintiffs was that defendant No. 1 had agreed to sell 01 Marla, i.e., 1/5th share of 05 Marlas, comprised in Rectangle No. 66, Killa No. 18/1/1(0-5) bearing M.C. Property No. 1822/674, situated at F.F. Road, Jalalabad, Tehsil Jalalabad, District Ferozepur, vide agreement to sell dated 10.09.2002/09.09.2024. In the alternative, the plaintiffs had sought recovery of Rs.1,20,000, i.e., Rs. 80,000/- paid as earnest money and Rs. 40,000/- as damages.



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3. It was asserted that as agreed between the parties, on 29.03.2025, the plaintiff, along with the balance sale consideration and requisite expenses, had remained present at the office of the Sub-Registrar, Jalalabad, to get the sale-deed executed. However, defendant No. 1 had failed to appear. Subsequently, on 04.04.2025, the plaintiff came to know that defendant No. 1 had already sold the suit property to defendant No. 2 vide registered sale-deed bearing Wasika No. 2505 dated 07.11.2002. Mutation on the basis of the said sale-deed was also entered in the name of defendant No.2.

4. The Plaintiff, while seeking specific performance of agreement to sell in his favour also sought declaration that the sale-deed executed in favour of defendant No. 2, along with the consequential mutation, be declared null and void being against the rights of the plaintiff.

5. Defendant No. 1 duly admitted the execution of the agreement to sell dated 10.09.2002/09.09.2004 in favour of the plaintiff. He, however, asserted that his son was working with defendant No. 2 as a financier, therefore, amount of Rs. 50,000/- was lend to him by defendant No. 2 on the condition that defendant No. 1 would mortgage his immovable property as security towards borrowed amount. He, however, asserted that since his son was working with defendant No. 2, therefore, in collusion with his son and Deed Writer, defendant No. 2 got a sale-deed executed in his favour in place of the intended mortgage deed. It was asserted that sale-deed is forged and fabricated. Defendant No. 1 further asserted that the plaintiff was put in possession of the suit property in pursuance of the agreement to sell dated 10.09.2002/09.09.2004 and claimed that plaintiff had occupied the suit property. He also stated that he is ready and willing to perform his part of the contract and is willing to execute a registered sale-deed in favour of the plaintiff.



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6. The suit was actively contested by defendant No. 2. Apart from raising preliminary objections, defendant No. 2 asserted that defendant No. 1 had executed an agreement dated 09.08.2002 to sell the suit property for a consideration of Rs. 41,500/-, out of which Rs. 25,000/- was paid as earnest money to defendant No. 1 and as per agreement dated 09.08.2002, the sale-deed was executed on 07.11.2002.

7. It was further asserted by defendant No. 2 in his written statement that on 07.11.2002 itself, he had leased out the suit property in favour of defendant No. 1, and a separate rent note was duly executed in this regard. It was asserted that alleged agreement dated 10.09.2002/09.09.2004 in favour of plaintiff were the result of fraud and a conspiracy between the plaintiff and defendant No. 1 to wriggle out of sale-deed dated 07.11.2002. Both the agreements were stated to be forged and fabricated. It was further contended that the sale-deed dated 07.11.2002 as well as the consequential mutation No. 17124, were validly executed and are in accordance with law.

8. From the pleadings of the parties, following issues were framed:

- “1. Whether the plaintiff has cause of action or locus-standi to file the present suit? OPP
2. Whether the sale deed in favour of the defendant No.2 is the result of fraud and misrepresentation played by the defendant No.1? OPD-1
3. Whether the defendant No.2 is bona fide purchaser for consideration? OPD-2
4. Whether the suit is not maintainable? OPD
5. Relief.”

9. Issue No. 1 was decided in favour of plaintiff and against the



defendants, holding that the plaintiff had a valid cause of action and locus standi. Issue No. 2 was decided against defendant No. 1 and in favour of defendant No. 2 it was held that sale-deed Ex D-1 is legal and valid document. Issue No. 3 was decided in favour of defendant No. 2 and against the plaintiff. It was held that defendant No. 2 was a *bona fide* purchaser for value. Issue No. 4 was decided against the defendants and in favour of the plaintiff.

10. Accordingly, the suit was partly decreed against defendant No. 1. Plaintiff was held entitled to recover earnest money of Rs. 80,000/- along with interest at the rate of 12% per annum from 09.09.2004 to the date of filing the suit, and thereafter interest at 6% per annum from the date of suit to date of recovery from defendant no.1.

11. Appeal preferred by the plaintiff-appellant was also dismissed by the Court of first instance vide judgment and decree dated 07.11.2014 passed by Additional District Judge, Fazilka.

12. On one hand, it is the case of the plaintiff that defendant No. 1 had executed an agreement to sell dated 10.09.2002, which was subsequently renewed on 09.09.2004. On the other hand, defendant No. 2 asserts that the plaintiff and defendant No. 1 are in collusion, and that defendant No. 1 had already sold the suit property in his favour vide sale deed dated 07.11.2002, executed pursuant to an earlier agreement to sell dated 09.08.2002. It is the case of defendant No. 2 that both the agreement to sell as well as the sale-deed are prior to the agreement being claimed by plaintiff-appellant. It is the case of defendant No. 2 that not only sale-deed was executed by defendant No. 1 in his favour rather a lease agreement, i.e., rent note was entered between plaintiff and defendant No. 2 after purchase of property on the same day, i.e., on 07.11.2002.



13. It is also not in dispute that defendant No. 2 had separately filed an eviction petition against the plaintiff on the basis of said rent agreement dated 07.11.2002. The date on which defendant No. 1 had executed sale-deed in favour of defendant No. 2. The said eviction petition was also allowed in favour of defendant No. 2, wherein the relationship of landlord and tenant between the parties was found to be established and eviction order was passed against the plaintiff-appellant vide Ex. D-15.

14. The appeal against the said judgment and decree, whereby the plaintiff was ordered to be evicted from the tenanted premises (i.e., two premises) was also dismissed. It is admitted between the parties that said order has attained finality.

15. Faced with the above facts, learned counsel for the appellants referred to the testimony of DW-13, stamp vendor Vijay Kumar, who in his evidence has admitted that he had not issued any stamp on 09.08.2002, upon which alleged agreement was executed by defendant No. 1 in favour of defendant No. 2. However, a perusal of the said evidence goes to show that DW-13 was never cross examined on behalf of defendant No. 2. Although the Court had deferred the cross-examination of DW-13 at the instance defendant No. 2 and thereafter DW-13 had never appeared. Again, to face cross examination by defendant No. 2.

16. In view of the fact that defendant No. 2 had never afforded an opportunity to cross examine DW-13, the evidence led by plaintiff-defendant No. 1 in the shape of the testimony of DW-13 cannot be read in evidence. Both the Courts below have rightly ignored the said testimony. Furthermore, defendant no.2 by leading evidence has succeeded in proving due execution of agreement



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dated 09.08.2002 and sale deed dated 07.11.2002. Defendant no.1 who had pleaded fraud could not discharge onus to prove fraud. Therefore, on one hand defendant no. 2 has successfully proved due execution of agreement to sell dated 09.08.2002 and sale deed dated 07.11.2002 as well as fact that plaintiff was taken as tenant by defendant no. 2 on 07.11.2002 itself, on other hand defendant and plaintiff have failed to prove alleged fraud.

17. In view of the totality of the facts noted above, especially the fact that the sale-deed was executed on 07.11.2002 and, on the very same day, a rent note was executed by the plaintiff in favour of defendant No. 2 in fact goes to show that plaintiff was aware about ownership of defendant No. 2 of the suit property as of 07.11.2002. Despite this, the suit was filed only in 2005. It seems that there has been a collusion between plaintiff and defendant No. 1 only to defeat rights of defendant No. 2 in the suit property arising from sale-deed dated 07.11.2002 in pursuance of prior agreement to sell dated 09.08.2002.

18. The element of collusion is clearly made out as agreement in favour of plaintiff subsequent to agreement in favour of defendant No.2, which was got entered on 09.08.2002.

19. Accordingly, there is no merit in the present appeal. The findings of both the learned Courts below on all the issues are hereby affirmed. No substantial question of law arises for consideration. Appeal is accordingly dismissed.

20. Pending miscellaneous application(s), if any, shall also stand disposed of.

10.09.2025
manoj

(PARMOD GOYAL)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No