



225 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5546-2014 (O&M)

Date of decision : 28.02.2025

Ajaib Singh (Deceased) through
his legal representatives

...Appellant

Vs.

Gurpreet Singh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Mamli, Advocate
for the appellant.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Santosh Sharma, Advocate
for respondent No. 1 to 3.

Mr. Baljeet Singh Sidhu, Advocate
for respondents No. 4 and 5.

ANIL KSHETARPAL, J. (Oral)

1. The defendant through his legal representatives assail the correctness of concurrent findings of fact arrived at by the Courts below while decreeing the plaintiff's suit for possession by way of specific performance of the agreement to sell dated 05.07.2004.

2. Sh. Ajaib Singh and his mother late Smt. Chinto Devi were owners of the land measuring 08 kanals 13 marlas. They entered into an agreement to sell in favour of the plaintiff-Sh. Gurmeet Singh on 05.07.2004 on receipt of Rs.2,50,000/- as earnest money against the total consideration of Rs.16,21,875/-. The sale deed was to be executed on 05.11.2005. The plaintiff claims that he was ready and willing but the defendants did not honour the agreement to sell. Hence, the suit was filed. The defendants denied execution of the agreement to sell on receipt of earnest money. Defendant No. 2(b) filed a



separate written statement again claiming that no agreement to sell was entered into.

3. Both the Courts decreed the plaintiff's suit.
4. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the requisitioned record of the trial Court.
5. Learned counsel representing the appellant has made the following submissions:-

I. While drawing of the attention of the Court to non-judicial stamp paper used for scribing the agreement to sell, he submits that the stamp paper was purchased on 30.04.2004, whereas, the agreement to sell was entered into on 25.07.2004. Moreover, the defendant has not purchased the stamp paper.

II. The plaintiff is a property dealer and there were rumors of acquisition of the land by the State. The defendant went for filing objection, however, by misrepresentation the agreement to sell was entered into.

III. The plaintiff has failed to prove payment of earnest money.

IV. The plaintiff has failed to prove that he was ready and willing to perform his part of the contract.

V. The plaintiff has also failed to prove that Sh. Ajaib Singh-defendant/appellant thumb-marked the agreement to sell.

6. *Per contra*, learned senior counsel representing the respondent contends that the defendant has changed his stand. In the written statement, the defendant averred that no agreement to sell was entered into, however, in



evidence he claims that the agreement to sell was got thumb marked on account of misrepresentation.

7. Sh. Nachattar Singh grandson of Smt. Chinto Devi filed a written statement admitting the agreement to sell.

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

9. On perusal of the agreement to sell, it is evident that it has been scribed on a non-judicial stamp paper of Rs.5/-. It is scribed on three pages. Each page is not only thumb-marked by Sh. Ajaib Singh but he has also signed the same. Smt. Chinto Devi has also thumb-marked all the three pages. On the last page, Sh. Ajaib Singh and Smt. Chinto Devi have thumb-marked on the left hand margin as well as at the bottom. It would be noted here that though the defendant has filed opinions of handwriting and finger print expert with regard to thumb-impression, however, he did not get his signatures compared. He has appended as many as four signatures on the agreement to sell. The stamp paper has been purchased by the plaintiff. The agreement to sell was scribed after two months of the purchase. Such agreement cannot be said to be illegal.

10. It is not in dispute that the defendant-Sh. Ajaib Singh while filing the written statement denied execution of the agreement to sell. He did not claim that the agreement to sell was thumb-marked on account of misrepresentation. Admittedly, there was no acquisition in the area. While appearing in evidence, Sh. Ajaib Singh has stated that 6-7 years before the execution of the agreement to sell, there was no acquisition in the area as preliminary notification under Section 4 of the Land Acquisition Act, 1894 was

never issued. Moreover, Sh. Nachattar Singh grandson of Smt. Chinto Devi has admitted the execution of the agreement to sell. Payment of earnest money of Rs. 2,50,000/- is acknowledged in the agreement to sell, which is signed and thumb-marked by the defendant. The plaintiff filed the suit within 20 days from the date when the sale deed was to be executed. While filing the plaint, the plaintiff has asserted that he was always ready and willing to perform his part of the contract.

11. In the end, learned counsel representing the appellant submits that the plaintiff filed previous suit for injunction on 18.06.2005, which was withdrawn in 2008. He submits that the plaintiff could have amended his suit.

12. This Court has considered the submissions, however, find no substance therein. The injunction suit was filed much before the agreed date on which the date agreed to for execution and registration of the sale deed. In any case, cause of action to file the suit for specific performance arose on or after 05.11.2005.

13. Keeping in view the aforesaid discussion, no ground to interfere is made out.

14. The appeal is dismissed.

15. All the pending miscellaneous applications, if any, are also disposed of.

28.02.2025

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(ANIL KSHETARPAL)
JUDGE

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