



-1-

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

**RSA-5406-2018 (O&M)
and other connected cases
Reserved on: 05.02.2025
Date of decision: 19.03.2025**

SAUDAGAR SINGH (DECEASED) THROUGH LRS.

..Appellant

Versus

BARJINDER SINGH MANN AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Gaurav Chopra, Sr. Advocate
with Mr. Anurag Chopra, Advocate
Ms. Divanshi, Advocate
Mr. Harmeet Singh, Advocate
for the appellant (s) (in RSA-9934-2018).

Mr. R.D. Bawa, Advocate
Mr. Samuel Gill, Advocate
Mr. Randhir Bawa, Advocate
Mr. Rishab Rana, Advocate
for the appellant(s) (in RSA-5406, 5795, 6370 & 6551 of 2018).

Mr. Chetan Mittal, Sr. Advocate
with Mr. Kunal Mulwani, Advocate
Mr. Nikhil Sabharwal, Advocate
Ms. Shifali Goel, Advocate
Mr. Vikas Thakur, Advocate
for the caveator/respondent(s) in all the cases.

ANIL KSHETARPAL, J.

1. Factual background:-

1.1 With the consent of learned counsel representing the parties, a batch of five connected regular second appeals (detail whereof is given at



-2-

the foot of the judgment) shall stand disposed of by a common order.

1.2 In order to comprehend the issues involved in the present case, the relevant facts, in brief, are required to be noticed.

1.3 Smt. Gokal Bai was allotted a land measuring 594 kanal and 4 marlas in village Garha and 107 kanals and 13 marlas in village Birmi, Tehsil and District Ludhiana. She entered into two agreements on 09.03.1966 and 08.03.1969 in favour of defendant No.1 Sh. Devki Nandan for a total sale consideration of Rs.26,956/- while delivering the physical possession in part performance of the agreement to sell. Earnest money of Rs.26,700/- was paid, whereas, remaining payment of Rs.200/- was to be paid at the time of execution of the sale deed. She did not honour the agreement forcing Sh. Devki Nandan to file a suit for specific performance of agreements to sell dated 09.03.1966 and 08.03.1969, which was partially decreed ordering refund of some amount, however, the relief of specific performance was declined vide judgment dated 27.12.1978. Two regular first appeals were filed to challenge the judgment of the trial Court. During the pendency of the aforesaid litigation, Sh. Devki Nandan in turn entered into three following agreements to sell:-

- i. 26.07.1979- Sh. Devki Nandan entered into an agreement to sell with respect to 152 kanal and 18 marlas in favour of Sh. Saudagar Singh, Sh. Malkiat Singh and Sh. Sadhu Singh. It was stated that out of half share of land comprised in Village Birmi i.e. 107 kanal and 13 marlas is agreed to be sold, whereas, the remaining land measuring 9 kanal and 1 marla will be from Village Garha. The total sale consideration was Rs.96,000/- out



-3-

of which Rs.10,000/- was paid as earnest money.

ii. 08.09.1979- Sh. Devki Nandan entered into an agreement to sell with respect to 80 kanal land out of total land measuring 107 kanal and 13 marlas situated in Village Birmi in favour of Sh. Saudagar Singh at the rate of Rs.5,000/- per acre while paying Rs.2,000/- as earnest money.

iii. 18.03.1983- Sh. Devki Nandan is alleged to have entered into an agreement to sell with Sh. Saudagar Singh with respect to 400 kanal remaining land while excluding the land involved in agreements to sell dated 26.07.1979 and 08.09.1979, located in Villages Birmi and Garha.

1.4 A regular first appeal filed by Sh. Devki Nandan was allowed and his suit for specific performance of the agreements to sell dated 09.03.1966 and 08.03.1969 was decreed. Letter patent appeal as well as special leave petition against the aforesaid judgment was dismissed. Ultimately, Sh. Devki Nandan was held entitled to a conditional decree for specific performance of the agreement to sell.

1.5 Three suits were filed for specific performance of agreements to sell dated 26.07.1979, 08.09.1979 and 18.03.1983 were filed by Sh. Saudagar Singh. In fact, one suit was filed by Sh. Saudagar Singh impleaded Sh. Malkiat Singh and Sh. Sadhu Singh as defendant No.3 and 4.

1.6 Sh. Devki Nandan while filing the written statement in all the three suits submitted that he executed the agreements to sell dated 26.07.1979 and 08.09.1979 but these agreements were entered into only to involve Sh. Saudagar Singh, who was an official in the revenue department



-4-

to protect possession. Sh. Devki Nandan belongs to District Rewari, Haryana, which is located near the Rajasthan Border, whereas, the property is located in District Ludhiana, Punjab. Thus, in order to get protection from unauthorized interference, these two agreements were executed. Neither any earnest money was paid nor possession of property was delivered.

1.7 Sh. Devki Nandan has denied execution of the agreement to sell dated 18.03.1983.

1.8 Sh. Devki Nandan died during the pendency of letter patent appeal on 29.04.1991. His heirs filed execution petition resulting in registration of six sale deeds on 19.05.1994 in the names of following persons:-

- i. Ajmer Kaur- 92 kanal located in Village Garha.
- ii. Gurkirpal Singh- 104 kanal and 5 marlas located in Village Garha.
- iii. Jaskaran Sing- 91 kanal and 9 marlas located in Village Garha.
- iv. Satwant Kaur- 139 kanal located in village Garha.
- v. Barjinder Singh Mann- 107 kanal and 17 marlas located in Village Birmi.
- vi. Ramesh Chander son of Sh. Devki Nandan- 167 kanal and 11 marlas located in village Garha.

2. Evidences adduced:-

2.1 In order to prove the agreement to sell dated 26.07.1979, the plaintiffs examined PW-1 Sh. Mukand Lal, scribe and PW-4 Sh. Balbir Singh son of Sh. Hardev Singh were examined apart from Sh. Saudagar Singh. Sh. Hardev Singh is an attesting witness of the agreement to sell, whereas, Sh. Balbir Singh is his son.



3. Reasons recorded by the trial Court:-

3.1 The trial Court partly decreed the suit to the extent of 1/3rd share as Sh. Malkiat Singh and Sh. Sadhu Singh did not join Sh. Saudagar Singh. The trial Court also held that cancellation deed cancelling the agreement to sell dated 26.07.1979 and 08.07.1969 has also not been proved. With respect to the second suit concerning agreement to sell dated 08.09.1979, the trial Court decreed the suit. With regard to third suit concerning agreement to sell dated 18.03.1983, the Court held that the agreement to sell is a result of trace forgery and Sh. Devki Nandan never signed this agreement to sell, hence, the suit was dismissed.

4. Reasons recorded by the First Appellate Court:-

4.1 Various first appeals and cross-objections were filed before the First Appellate Court. The First Appellate Court has upheld the finding of the trial Court with respect to traced forgery of agreement to sell dated 18.03.1983, whereas, agreements to sell 26.07.1979 and 08.09.1979 have been declared to be vague and were declared to be entered into only to lend name of Sh. Saudagar Singh, an official in the revenue department. Resultantly, all the three suits have been dismissed.

5. Analysis and discussion:-

5.1 This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook along with the requisitioned record.

5.2 Sh. Gaurav Chopra, Senior Advocate, has entered appearance in RSA-9934-2018, relating to agreement to sell dated 08.09.1979. He has made the following submissions:-

“1. That the learned Lower Appellate Court erroneously held that the Agreement to Sell dated 08.09.1979 was a



-6-

Sham Agreement and was not intended to be acted upon and was merely a paper transaction.

2. *The Ld. Appellant Court wrongly relied on the oral testimonies of DW 11 (Barjinder Singh Maan) and DW 12 (Smt. Ajmer Kaur), who were neither parties to the agreement nor its executants or witnesses.*

3. *The onus to prove that the Agreement dated 08.09.1979 was not a sham agreement was wrongly placed on the Plaintiff whereas positive evidence ought to have been led by the Defendants to defeat the admission regarding execution of the agreement dated 08.09.1979 as also the testimonies of PW 1 and PW 3 has also oral evidence to prove payment of earnest money at the time of execution of the agreement.*

4. *That the Lower Appellate Court completely misread the recitals of the agreement to sell by returning findings that the in the agreement Eh. P1, there was a recital regarding **delivery of possession**. In fact, the Agreement dated 08.09.1979 carried n such recital and the material evidence has been misread and misinterpreted.*

5. *Even otherwise, even if possession has not been delivered that per se was no ground to disbelieve the case setup by the Plaintiff. (**Reliance is placed upon Jiwan Kumar v. Simar Sain, 2015(5) RCR (Civil) 682**).*

6. *The court wrongly held that the Plaintiff was not ready and willing to discharge his obligations under the Agreement. While returning these findings the Lower Appellate Court has ignored the following crucial aspects:*

(i) The recitals of the Agreement to Sell have been completely overlooked.

(ii) Immediately upon acquiring knowledge regarding decision of the RFAs by this Hon'ble Court, Plaintiff repeatedly approached the Defendant No. 1 for the purpose of executing the Sale Deed in terms of the Agreement. A legal Notice dated 09.03.1987 was also issued by the Plaintiff for calling upon the Defendant No. 1 to execute the sale deed (Para 12 of the Plaint). Despite receipt of the Legal notice, as admitted by the Defendant No. 1 in his written statement, he failed to come forward to execute the sale deed. No reply to the legal notice was placed on record. The civil suit was filed by the Plaintiff on 27.04.1987 who has been pursuing the lis ever since and this fact demonstrates the Plaintiff's readiness and willingness. The Plaintiff was not cross-examined as regards his readiness and capacity to pay the balance sale consideration.



-7-

Even if the Plaintiff was unable to prove the payment of an amount of Rs. 40,000/- in instalments towards the payment of the balance sale consideration, the same could not be set up as a ground to non-suit the Plaintiff, especially in the absence of there being any obligation of the Plaintiff to pay the balance sale consideration prior to execution of the sale deed and that too within a period of one month from the date of information communicated to him by the Defendant No. 1 of the successful outcome of the RFA filed in this Hon'ble court. Consequently, the pleading of the Plaintiff to pay the balance sale consideration for executing the sale deed ought to have been treated by the Lower Appellate Court to pay the entire balance sale consideration after excluding the amount admittedly paid by the Plaintiff. This is without prejudice to the claim of the Plaintiff that an amount of Rs. 20,000/- each was paid in two instalments by the Plaintiff to the Defendant No. 1.

(iii) The Ld. Appellate Court concluded that the Plaintiff failed to prove the payment of Rs. 40,000/- as part of the sale consideration. The fact that that Rs. 2,000/- was paid as earnest money and that partial payment does not render an agreement invalid was ignored by the Ld. Appellate Court.

7. The Lower Appellate Court has misread the order dated 22.07.1993 whereby the Compromise decree dated 03.03.1993 had been recalled. While recalling the order, it was observed that some material facts had been concealed from the Court in so far as the person i.e. Sadhu Singh who appeared on behalf of the LR's of the Defendant No. 1 as their duly constituted SPA holder was not competent to make a statement and enter into a compromise in view of the stand taken by the LR's of Defendant No. 1 in their application under Order 47 Rule 1 CPC that the SPA dated 05.07.1991 (Ex PA) executed by the LR's of Defendant No. 1 had allegedly been cancelled on 14.10.1991. This was essentially a dispute between the LR's of Defendant No. 1 and their attorney and had nothing to do with the Plaintiff. Additionally, it was observed by the Trial Court that no Decree could be passed without hearing the Defendant No. 2 who, as on 3.3.1993, still continued to remain the owner of the suit property. Accordingly, the order dated 03.03.1993 was recalled on account of procedural issues and the Lower Appellate Court fell in serious error in observing that the Plaintiff was not entitled to the relief of specific performance on account of having practiced



-8-

fraud upon the court when no such findings were returned in the order dated 22.07.1993.

8. Considering that the agreement dated 26.07.1997 and 08.09.1979 had been executed between the Defendant No. 1 (vendor) and the Plaintiff (vendee) and even if some part of land in these two agreements executed between the same parties, it would not render the agreement to sell vague especially when no title passes upon mere execution of an agreement to sell. The capacity of the Defendant No. 1 to execute the agreements on account of being owner of the suit property is not disputed. Even if there was some overlapping of the land in the two agreements, the court, while granting specific performance could have relied upon the statutory provision of Section 12 of the Specific Relief Act, 1963 while ordering Defendant No. 1 to execute the sale deed which had not yet been conveyed to the plaintiff and of which, the Defendant No. 1 remained its owner.

9. The Lower Appellate Court has overlooked the fact that execution of the Agreement to Sell dated 08.09.79 had been duly proved on the record. Payment of earnest money was duly proved. Readiness and willingness of the Plaintiff to prove his part of the contract was also demonstrated from the evidence on record. Yet, the Lower Appellate Court relied upon surmises and conjectures and irrelevant considerations, alien to a plea of specific performance, while non- suiting the plaintiff and without testing the conduct of the defendants and the might employed by the Defendant No. 3 who was employed and working as DIG, Punjab Police.”

5.3 In the remaining appeals, Sh. R.D. Bawa, Advocate, apart from making his oral submissions, has filed written submissions while giving the facts of the case. He has submitted that the Court has erred in observing that there is a recital in the agreement to sell dated 26.07.1979 for delivery of possession. Bifurcation of the agreement to sell is not permitted under law, hence, the first suit with respect to agreement to sell dated 26.07.1979, should have been decreed in ‘*toto*’. He further submits that although, the agreement to sell dated 18.03.1983 could not be proved, however, Smt. Ajmer Kaur and Sh. Barjinder Singh Mann have admitted the execution of the three agreements. Hence, the plaintiff Sh. Saudagar Singh is entitled to



-9-

decree for specific performance in all the three suits.

5.4 With respect to argument No.(i) and (iii), it may be noticed, that there is no explanation how and in what manner the decree for specific performance of agreements to sell dated 26.07.1979 and 08.09.1979 can be granted. 107 kanal and 13 marlas was the total land allotted to Smt. Gokal Bai in village Birmi, which stood transferred to Sh. Devki Nandan pursuant to the decree for specific performance. Now, the first agreement was executed on 26.07.1979 by Sh. Devki Nandan in favour of Sh. Saudagar Singh, Sh. Malkiat Singh and Sh. Sadhu Singh. As per recital, half share of 107 kanals and 13 marlas, which is equivalent to 53 kanal and 17 & ½ (half) marla located in village Birmi was agreed to be sold. On 08.09.1979, another 80 kanal land located in village Birmi was agreed to be sold in favour of Sh. Saudagar Singh. The total land comes to 133 kanal 17 ½ (half) marla in village Birmi, whereas, the total land allotted to Smt. Gokal Bai and which in turn came to Sh. Devki Nandan was only 107 kanal and 13 marlas. On a careful reading of agreement to sell dated 26.07.1979, it is evident that there is a recital with regard to rectangle and khasra numbers of land measuring 107 kanal and 13 marlas located in village Birmi, thereafter, it is recited that half share of land situated in village Birmi is agreed to be sold by Sh. Devki Nandan in favour of Sh. Saudagar Singh, Sh. Malkiat Singh and Sh. Sadhu Singh. Only Sh. Saudagar Singh filed suit. He did not joint Sh. Malkiat Singh and Sh. Sadhu Singh as plaintiffs. Sh. Malkiat Singh and Sh. Sadhu Singh were impleaded as defendants in the suit. Sh. Malkiat Singh and Sh. Sadhu Singh have admitted the cancellation deed dated 23.07.1980, cancelling agreements to sell dated 26.07.1979 and 08.09.1979. Sh. Saudagar Singh while appearing in evidence has failed to explain the



-10-

reason or execution of a subsequent agreement to sell dated 08.09.1980 with respect to 80 kanals land located in village Birmi. In this agreement also description of rectangle and khasra numbers of 107 kanal and 13 marlas has been given and it has been recited that 27 kanal 13 marlas which abuts the path stands excluded, whereas, remaining is agreed to be sold. Thus, no specific performance could be ordered in absence of explanation. This Court has also examined the matter in the context of novation/subsequent agreement in terms of Section 62 of the Indian Contract Act, 1872. However, it is not the case of Sh. Saudagar Singh that previous agreement dated 26.07.1979 stood superseded by subsequent agreement dated 08.09.1979. Moreover, the first agreement to sell executed on 26.06.1979, was in favour of Sh. Saudagar Singh, Sh. Malkiat Singh and Sh. Sadhu Singh. Thus, the First Appellate Court has correctly held that the agreements to sell dated 26.07.1979 and 08.09.1979 were sham transactions and were not intended to be acted upon.

5.5 With regard to submission No.(ii), it may be noted that Sh. Devki Nandan also does not dispute execution of the agreement to sell dated 26.07.1979 and 08.09.1979. Hence, the testimony of Sh. Barjinder Singh or Smt. Ajmer Kaur would not advance the plaintiff's case.

5.6 With regard to submission No.(iv) and (v), it may be noted that failure to notice that actual delivery of possession is recorded in the agreement dated 18.03.1983, however, when Sh. Saudagar Singh appeared in evidence, he admitted that Sh. Devki Nandan is in actual possession of the property. In any case, this would not be sufficient to reverse the finding of the First Appellate Court because the plaintiff is required to stand on his own legs.



-11-

5.7 With regard to submission No.(vi), it may be noted that the plaintiff while filing the suit has claimed that he is willing to pay the balance sale consideration of Rs.8,000/-. Both the Courts on appreciation of evidence have found that the plaintiff has failed to prove two receipts of Rs.20,000/- each. Moreover, the Courts on appreciation of evidence have come to a conclusion that the plaintiff was not ready and willing to pay balance sale consideration.

5.8 Apart from this, there is another development which took place during the pendency of the suit. Sh. Sadhu Singh is one of the co-agreement holder along with Sh. Saudagar Singh as per agreement to sell dated 26.07.1979. He did not join the plaintiff while filing the suit for specific performance. Subsequently, he appeared as attorney of heirs of Sh. Devki Nandan and entered into settlement. Subsequently, it was found that power of attorney in favour of Sh. Sadhu Singh stood already cancelled. Thus, the Courts have formed opinion that an effort has been made to defraud the Court.

5.9 With regard to submission No.8, Section 12 of the Specific Relief Act, 1963 (in short '1963 Act'), would not be applicable because there is no explanation with regard to inconsistency in the agreements to sell dated 26.07.1979 and 08.09.1979. It was not an inadvertent overlapping of khasra numbers. Sh. Saudagar Singh was an official in the revenue department. It was in his knowledge only that Smt. Gokal Bai was allotted 107 kanal and 13 marlas in village Birmi. Hence, she could not enter into the agreements to sell with respect to 133 kanal and 17 & ½ (half) marla land. When litigation between Sh. Devki Nanda and Sh. Gokal Bai was pending, Sh. Saudagar Singh was actively involved from very beginning.



-12-

5.10 Additionally, the plaintiff has never pleaded the applicability of Section 12 of the '1963 Act' to the facts of his case.

5.11 The submission No.9 of learned counsel also does not have substance because agreement to sell dated 08.09.1979 is proved to have been executed only to show to the public that Sh. Saudagar Singh's interest was involved and Sh. Devki Nandan was able to use Sh. Saudagar Singh's name to protect his possession.

5.12 With regard to submissions of Mr. R.D. Bawa, Advocate, it may be noticed that delivery of possession at the time of execution of the agreement to sell is not important. The pivotal issue in this case is workability/enforceability of the two agreement to sell. Both the agreements to sell are irreconcilable with respect to village Birmi.

5.13 With regard to the third agreement, the appellant's counsel admits failure on the part of the appellant to prove the agreement to sell. The admission of Smt. Ajmer Kaur and Sh. Barjinder Singh Mann would not advance the plaintiff's case because neither they were a party nor they were present. Moreover, the plaintiff wants specific performance against Sh. Devki Nandan, who has denied the execution of the agreement to sell. It has been proved before the Courts below that the aforesaid agreement dated 18.03.1983, was not signed by Sh. Devki Nandan and it was a result of a trace forgery of his signatures. The handwriting and fingerprint expert has opined while giving detailed reasons. It has been found by the expert that signatures of Sh. Devki Nandan are a result of traced forgery because the disputed signatures show tremors, signs of hesitations, slow and drawn movement, unnecessary pen lifts and pen pauses at unlikely places, careful joinings, indent marks etc., whereas, on the other hand, the standard



-13-

signatures are absolute free from any of these defects. It has further been found that disputed signatures 'Q1' to 'Q5' reveal the size of the overall signatures and also the size of individual letters, inter letter spacing, relative positions of letters with each other, placing of vowel signs are exactly similar in all these five disputed signatures. Even the length, breadths, heights, size of loops and retracing and the angles are also found exactly similar in them. The expert has concluded that the five disputed signatures are exactly alike in all the features as stated and human hand is not a machine and it cannot produce letters and signatures geometrically like a machine. Though, the plaintiff examined handwriting and fingerprint expert, however, he failed to produce the enlarged photographs for the perusal of the Court. Thus, the Court found that the plaintiff has withheld the material evidence and the report of the expert examined by the defendant is more reliable. The Court also found that the plaintiff examined Sh. Prem Chand Sharma to identify the signatures of Sh. Inder Dutt, the attesting witness of agreement to sell dated 18.03.1983, however, he is not related to Sh. Inder Dutt because in the cross-examination he admits that he is not the nephew of Sh. Inder Dutt, though, he stated so in the examination-in-chief.

6. Decision:-

6.1 Keeping in view the aforesaid discussion, this Court does not find any ground to interfere with the findings of fact arrived at by the Courts below while dismissing civil suit for specific performance with respect to agreement to sell dated 18.03.1983, and findings of fact arrived at by the First Appellate Court while dismissing plaintiff's suits for specific performance of the agreements to sell dated 26.06.1979 and 08.09.1979.



6.2 Hence, all the appeals are dismissed.

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

19th March, 2025

Ayub

(ANIL KSHETARPAL)
JUDGE

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

Sr. No.	Case No.	Appellant(s)
1.	RSA-5406-2018 (O&M)	SAUDAGAR SINGH (DECEASED) THROUGH LRS. V/S BARJINDER SINGH MANN AND ORS
2.	RSA-5795-2018 (O&M)	SAUDAGAR SINGH (DECEASED) THROUGH LRS. V/S BARJINDER SINGH MANN AND ORS
3.	RSA-6370-2018 (O&M)	SAUDAGAR SINGH (DECEASED) THROUGH LRS. AND ANR V/S GURKIRPAL SINGH MANN AND ORS
4.	RSA-6551-2018 (O&M)	SAUDAGAR SINGH (DECEASED) THROUGH LRS. V/S GURKIRPAL SINGH MANN AND ORS
5.	RSA-9934-2018 (O&M)	SAUDAGAR SINGH (DECEASED) THROUGH LRS. V/S BARJINDER SINGH MANN AND ORS

19th March, 2025

Ayub

(ANIL KSHETARPAL)
JUDGE