



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

RSA No.2476 of 2024 (O&M)

Date of Decision: 05.08.2025

Kuldip Kaur @ Kuldeep Kaur and others

...Appellants

Versus

Surinder Kaur and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Paramjit Singh Bal, Advocate
for the appellants.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiffs appeal against judgment and decree dated 03.08.2024 passed by the Court of Additional District Judge, Ludhiana, dismissing the appeal filed against the judgment and decree dated 17.01.2019 passed by the Court of Civil Judge (Junior Division), Payal, vide which the suit for possession by way of specific performance of agreement to sell dated 20.11.1987 and consequential relief of permanent injunction was dismissed.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. One Kaur Singh was stated to be owner of land measuring 32 Bigha 17 Biswas situated at Village Gurditpura (Tehsil Payal) District Ludhiana. Out of the said land, he is stated to have executed an agreement to sell on 20.11.1987 *qua* land measuring 4 Bighas (hereinafter referred to as the suit land) in favour of the plaintiffs. The rate was fixed at ₹50,000/- per bigha making the total sale consideration to be ₹2 lakhs. The entire amount

was stated to have been received in cash on the same day from Gurjant Singh, (plaintiffs No.1 and 2 claimed to be widows of Gurjant Singh and plaintiff No.3 is his son).

3.1 It was averred that the parties had agreed that the sale deed would be got registered as and when Gurjant Singh would ask for the same. The possession of the suit land is stated to have been delivered on the day of execution of the agreement to sell i.e. 20.11.1987. Gurjant Singh is stated to have remained in possession of the suit land till his death on 01.07.1999. The plaintiffs inherited his movable and immovable property after his death.

3.2 It was averred that Kaur Singh had not been seen or heard by anybody for the past many years. Plaintiffs requested the defendants (legal representatives of Kaur Singh) to get the sale deed registered but they kept on putting off the matter. Thereafter, they started advancing threats to the plaintiffs as regards their forcible dispossession from the suit property and alienation of the same. Plaintiffs claimed to have been ready and willing to perform their part of the contract but the defendants are stated to have resiled.

3.3 A legal notice dated 21.04.2009 is stated to have been issued calling upon the defendants to appear on 04.05.2009 before the Sub-Registrar, Payal for execution of the sale deed. Despite the fact that the plaintiffs appeared, the defendants did not turn up. Accordingly, the suit was filed.

4. The suit was opposed by the defendants. Separate written statements were filed by defendants No.1 and 2. The execution of the agreement to sell was denied. It was denied that Gurjant Singh or the plaintiffs had been in possession of the suit land. It was denied that Kaur

Singh was not alive and an objection was raised that he had not been impleaded.

4.1 Defendant No.2 raised an objection that in view of a previously instituted suit titled as '**Kuldip Kaur and another Vs. Surinder Kaur and another**', the present suit would not be maintainable and would also be barred by the provisions of Order 2 Rule 2 CPC. The agreement to sell was claimed to be a forged and fabricated document. It was averred that it did not bear the signatures of Kaur Singh. All other averments were denied.

5. Plaintiffs filed replication to the written statement filed by the defendants in which the averments made in the plaint were reiterated and those in the written statements were denied.

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

1. Whether Kaur Singh executed agreement to sell dated 20.11.1987 on receipt of earnest money ?OPP
2. Whether plaintiff is entitled to possession by way of specific performance ?OPP
3. Whether plaintiff has been ready and willing to perform his part of the contract ?OPP
4. Whether plaintiff is entitled to permanent injunction ?OPP
5. Whether suit is not maintainable ?OPD
6. Whether suit is bad for non-joinder of necessary parties ?OPD
7. Whether suit is collusive between plaintiff and defendants no.2?OPD
8. Whether suit is barred under Order 2 Rule 2 CPC ?OPD
9. Whether suit of the plaintiff is false, frivolous and vexatious? OPD
10. Whether suit is within time ?OPP
11. Relief.

7. Parties led their respective evidence. The trial Court dismissed the suit which led them to file an appeal which was also dismissed by the Court of Additional District Judge, Ludhiana, leading to the filing of the present second Appeal.

8. I have heard learned counsel for the appellants.

9. Learned counsel submits that both Courts erred in dismissing the suit filed by the plaintiffs. Learned counsel has referred to the judgments passed by both Courts and has submitted that the same are not sustainable. Learned counsel has submitted that after the execution of the agreement to sell in 1987, Gurjant Singh was put into possession and after him, the plaintiffs were put into possession of the suit land and it was only when their possession was threatened that the suit was instituted. He submits that both Courts did not examine the matter from the correct perspective and erroneously non-suited the plaintiffs.

10. I have considered the submissions made by learned counsel for the appellants but find the same to be devoid of merit.

11. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317*** and ***Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

12. The onus to prove the execution of the agreement to sell (Ex.P-1) dated 20.11.1987 was on the plaintiffs. One of the plaintiffs-Manpreet Singh (son of Gurjant Singh) stepped into the witness-box as PW-1 and one of the widows-Jit Kaur also appeared as PW-2. However, Manpreet Singh did not appear for his cross-examination as a result of which, his testimony in the examination-in-chief was rightly discarded. Jit Kaur tried to state that she was present when the agreement to sell was executed. However, in the cross-examination she stated that she has not appended her signatures on the same. She also stated that she was not aware as to who had scribed the document. Further, the plaintiffs also examined a handwriting expert PW-3 who stated that the signatures of Kaur Singh on the agreement to sell (Ex.P1) and a sale deed executed by him on 30.03.1976 were the same. However, the Courts examined both signatures with naked eye and found the signatures to be visibly different. It is well known that experts tend to give reports in favour of parties who engage them. The trial Court, exercising powers under Section 73 of the Evidence Act compared the signatures on the agreement with the admitted signatures of Kaur Singh and found them to be starkly different. Though the trial Court did not follow the procedure to invoke section 73 of the Evidence Act, it recorded a categoric finding that the signatures were totally different. No doubt, the defendants did not examine any expert but it has to be borne in mind that the onus to prove the execution of the agreement to sell was on the plaintiffs and they could not have been permitted to derive any advantage from any weakness in the case of the defendants.

13. Going further, there were two attesting witnesses of the agreement to sell namely Pritam Singh and Hardev Singh. Hardev Singh

stepped into the witness box as PW-4 but again, after tendering his affidavit in examination-in-chief, he did not step into the witness box. Though, this witness was given up by the plaintiffs as having been won over, the Courts rightly found that he should have been declared hostile and then should have been cross-examined. Pritam Singh, Lambardar was stated to have expired. His son simply stepped into the witness box and identified his signatures. His death certificate was also not produced on record. The Courts rightly found that this in itself would not discharge the onus of proving the agreement to sell. Still further, neither the deed writer nor the scribe were examined. The plaintiffs, therefore, could not prove the execution of the agreement to sell.

14. As regards the issue of limitation and the suit being barred by Order 2 Rule 2 CPC, the Courts found that the suit was not barred by limitation nor was it barred by the provisions of Order 2 Rule 2 CPC. These findings have not been challenged by the defendants and, therefore, there would be no occasion for this Court to examine the said findings though it is quite strange that after the alleged execution of the agreement to sell on 20.11.1987, no reason was forthcoming as to why the suit was filed on 22.05.2009 i.e., almost after 22 years. Their having been put in possession of the suit property was also found to be false, for their name did not find mention in the revenue record produced by the plaintiffs.

15. Both Courts, therefore, rightly found that the execution of the agreement to sell did not stand proved. Nothing has been pointed out by learned counsel for the appellants which could have led this Court to interfere in the concurrent findings of facts recorded by both Courts. No misreading or mis-appreciation of evidence is found warranting interference.

In view of the aforesaid, I do not find any merit in the instant appeal and the same is accordingly dismissed.

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

(VIKRAM AGGARWAL)
JUDGE

August 05, 2025
Rekha

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