



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

**RSA No.121 of 2020 (O&M)
Date of Decision : 18.02.2025**

Satish Kumar

.....Appellant

Versus

Vishavnath and another

.....Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Yashdeep Nain, Advocate
for the appellant.

PANKAJ JAIN, J.(Oral)

CM No.322-C of 2020

This is an application filed under Section 5 of Limitation Act seeking condonation of delay of 21 days in filing the instant appeal.

For the reasons recorded in the application, this Court is satisfied that the applicant/appellant has made out a sufficient cause for condonation of delay.

Consequently, the present application is allowed. The delay of 21 days in filing the instant appeal is hereby condoned.

RSA No.121 of 2020

Plaintiff is in second appeal. For convenience, the parties hereinafter are referred to by their original position before the Court of the First Instance, i.e., appellant as plaintiff and respondents as defendants.



2. Plaintiff filed suit for recovery of Rs.40,00,000. As per the plaintiff, defendants offered to sell land measuring 44 Kanal 14 Marlas in favour of the plaintiff. The agreement to sell dated 07.03.2008 was executed. Defendant No.1 received a sum of Rs.20,00,000/- as earnest money. The parties agreed to get the sale deed executed on or before 05.02.2009 on receipt of balance sale consideration. The price of the land was agreed @ Rs.8,00,000/- per acre. As per the terms of the agreement to sell, plaintiff was granted right to recover double of the earnest money i.e. Rs.40,00,000/- in case defendant No.1 fails to execute the sale deed or to get the sale deed executed through Court. As per the plaintiff, defendant No.2 stood as guarantor and agreed that in case defendant No.1 fails to get the sale deed executed, defendant No.2 shall secure and pay a sum of Rs.40,00,000/- to the plaintiff. Guarantee deed dated 07.03.2008 is on record.

3. As per the plaintiff, he remained present in the office of Sub Registrar, Ladwa on 05.02.2009 and 06.02.2009 with the balance sale consideration. Plaintiff claims to have always remained ready and willing to perform his part of the contract and pleaded that the defendants having failed to perform their part, are liable to execute sale deed in favour of the plaintiff. Plaintiff further claimed that he found out in December, 2010 that defendant No.1 had already executed an agreement to sell dated 02.09.1982 *qua* the same property in the name of one Sheo Ram. Sheo Ram filed suit for specific performance against defendant No.1, which was decreed on



10.12.1994. The first appeal preferred against the decree in favour of Sheo Ram, was also dismissed on 30.09.1995. The second appeal was dismissed on 08.10.2009. The sale deed *qua* the said property now stands executed and registered in favour of successors-in-interest of Sheo Ram by the order of the Court. Defendant transferred part of property in favour of his daughter-in-law namely Rajni vide Civil Court decree dated 23.11.1995 passed in Civil Suit No.795 of 1995. Plaintiff thus claimed that he having been tricked by a calculated fraud at the hands of the defendant, is entitled to recover amount equal to double of the earnest money.

4. Suit was contested by defendant No.1 by filing written statement denying the allegations made in the plaint. It was claimed that one Jai Bhagwan Sharma @ D.D. is *samdhi* of the plaintiff. He is a commission agent having shop in Anaj Mandi, Pipli under the name and style of 'M/s Sarpanch Trading Company'. Defendant No.1 used to sell his crops at the aforesaid firm for the period from the year 2005 to 2009. As per custom, commission agents keep signed stamp-papers. Accordingly, defendant No.1 used to give signed blank-papers to Jai Bhagwan Sharma as security to secure transaction. It is those signed blank stamp-papers which have been misused by Jai Bhagwan Sharma to forge agreement in question. There arose a dispute w.r.t. accounts between the plaintiff and the answering defendant which led to filing of the present suit by the plaintiff, who is acting at the behest of Jai Bhagwan Sharma. No agreement to sell was ever



executed by defendant No.1. No guarantee deed was ever executed by defendant No.2.

5. Defendant No.2 also filed written statement on the same lines denying execution of guarantee deed/*jamanatnama* dated 07.03.2008.

6. On the basis of the pleadings, Court of the First Instance framed the following issues :

- “1. Whether plaintiff is entitled to a decree for recovery of Rs.40,00,000/- along with pendente lite and future interest at the rate of 18% per annum on the grounds mentioned in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable in the present form? OPD
3. Whether the plaintiff has no locus standi to file and maintain the present suit? OPD
4. Whether the plaintiff has been estopped to file and maintain the present suit by his own act and conduct? OPD
5. Whether the plaintiff has no cause of action? OPD
6. Whether the plaintiff has concealed true and material facts from the court? If so, its effect OPD
7. Relief.”

7. Courts below found that the plaintiff claims to have paid an amount of Rs.20,00,000/- as earnest money, in cash. However, he failed to produce any cogent evidence to prove the source of the said amount. The Courts below held that in the absence of there being any evidence to prove as to how the plaintiff arranged huge cash amount of Rs.20,00,000/-, it cannot be believed that the said earnest money was paid by the plaintiff.



8. During the course of arguments, counsel for the appellant was asked to show the agreement to sell propounded by the plaintiff.

9. A bare perusal of the same shows that the spacing in the last lines is much less as compared to the initial lines of the agreement. Counsel for the appellant is also not in position to dispute the said fact. This goes on to prove that an attempt was made to adjust the contents of the agreement on a paper which was already signed. The same is evident from the naked eyes. Thus, the Courts below have rightly discarded an agreement to sell which on the face of it seems to be a document created by adjusting the contents on an already signed paper. The document propounded by the plaintiff to drive-home liability of defendant No.2 in form of *jamanatnama* i.e. guarantee deed (Ex.P8), is also not free of suspicion. The guarantee deed was executed on the day of execution of agreement to sell. Though the agreement to sell has been executed on a stamp-paper and was notarized but the guarantee deed was neither executed using the stamp document nor was notarized. The print in the two documents is different, even though the same are contemporaneous and are claimed to have been typed by the same deed writer apart from being executed between the same parties.

10. In view of above, this Court finds that the Courts below rightly dismissed the suit filed by the plaintiff. Pure findings of facts have been recorded by the Courts below. Re-appreciation of the evidence in the absence of any question of law is beyond scope of second appeal.



11. Scope of second appeal under Section 41 of the Punjab Courts Act, 1918 came up for consideration before Apex Court in '**Randhir Kaur Versus Prithvi Pal Singh & Ors.**' 2019(17) SCC 71 wherein it was held as under :-

"14. The Division Bench of Punjab and Haryana High Court in a judgment reported in *Sadhu v. Mst. Kishni*, 1980 AIR (Punjab) 85 set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:

"12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to **Detty Paitabhiramaswami v. S. Hanymayya** [AIR 1959 Supreme Court 57.], **Madamanchi Ramappa v. Muthaluru Bojjappa** [AIR 1963 Supreme Court 1633.], **Bithal Dass Khanna v. Hafiz Abdul Hai** [1969 S.C. Notes 481.] and **Afsar Shaikh v. Soleman Bibi** [(1976) 2 SCC 142: AIR 1976 Supreme Court 163.]. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the



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12. The said dictum was further elaborately echoed by three Judges Bench in **Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732** as under:

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17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some



custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

13. Resultantly, finding no merit in the instant appeal, the same is ordered to be dismissed.

February 18, 2025		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No