

RSA-2413-1993

2026.PIIIC:014475



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(113)

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Date of Decision: - 31.01.2026

Jassa Singh

....Appellant

Versus

Suhail Singh and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present: - Ms. Manveen Kahlon, Advocate, for the appellant.

None for the respondents.

VIKAS BAHL, J. (ORAL)

I N D E X

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1. Plaintiff is in Regular Second Appeal which has been filed under Section 41 of the Punjab Courts Act, 1918. Challenge in the present appeal is to the judgment dated 03.09.1993 vide which the 1st Appellate Court had set aside the judgment and decree dated 02.12.1991 passed by the trial Court and had dismissed the suit filed by the plaintiff for possession by way of specific performance of the agreement to sell dated 24.12.1987 with respect to the suit land.

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ARGUMENTS ON BEHALF OF THE APPELLANT

2. Learned counsel for the appellant has submitted that in the present case the trial Court, after taking into consideration all the aspects, had rightly decreed the suit of the plaintiff for specific performance. It is further submitted that the plaintiff had duly proved the agreement to sell dated 24.12.1987 by examining both the attesting witnesses of the said agreement to sell i.e. Santokh Singh as PW2 and Dalbir Singh as PW3 and also the scribe of the said agreement to sell, Achhar Singh PW1. It is argued that even the aspect of readiness and willingness had been rightly decided by the trial Court and it was proved beyond doubt that the plaintiff was and has been ready and willing to perform his part of the agreement. It is submitted that the plaintiff had paid the earnest money of Rs.10,000/- and the last date for executing the sale deed was 31.10.1988 and prior to the said last date, the plaintiff/appellant had issued a notice dated 27.10.1988, clearly stating in the same that he had the balance sale consideration and was ready to execute the sale deed. It is further submitted that on 31.10.1988, the plaintiff/appellant had gone to the office of the sub-registrar and his presence was duly marked by the sub-registrar and the documents regarding the same had also been exhibited. It is further submitted that in spite of having waited there from 9 A.M. to 5 P.M. along with the balance sale consideration, the defendants did not turn up and thereafter the plaintiff issued another legal notice dated 07.11.1988, which has also been duly exhibited on record.

3. It is submitted that in the month of November itself i.e. 29.11.1988, once defendant No.1 did not execute the sale deed, the plaintiff had filed the present suit in which it was specifically averred that the plaintiff was ready and willing to perform his part of the agreement. It is

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submitted that the said aspect had been rightly considered by the trial Court but the 1st Appellate Court, without considering any of the said aspects, had wrongly set aside the well reasoned judgment of the trial Court. It is argued that the primary reason given by the 1st Appellate Court to set aside the judgment of the trial Court and to dismiss the suit of the plaintiff is to the effect that defendant No.1 had examined DW1 R.S. Bal, handwriting expert who had given the report that the signatures of the defendant No.1 on the agreement (Ex.P1) did not tally with his alleged specimen signatures on the written statement. It is argued that the said reason given is completely perverse and is on account of misreading of the evidence of DW1 and also of other evidences and the documents on record. It is submitted that the signatures on the written statement (Ex.D1) which has been filed after the plaintiff had filed the suit and was subsequent to the dispute having been raised by the plaintiff could not be taken as the standard signatures, as once defendant No.1 was aware that the plaintiff had filed a suit, defendant No.1 would make every endeavour to change his signatures. It is submitted that there were several documents which were executed prior to the filing of the suit which were available and duly exhibited on record which should have been taken as the standard signatures.

4. It is further submitted that the sale deed dated 11.06.1987 (earlier marked as Mark 'X' and subsequently exhibited as Ex.PX) as well as the sale deed dated 07.08.1987 (earlier marked as Mark 'PY' and subsequently exhibited as Ex.PY) carried the signatures of said defendant No.1/Suhail Singh. It is submitted that Suhail Singh, while appearing as DW3 had admitted his signatures on both Ex.PX as well as Ex.PY and the handwriting expert who had been examined by the defendants as DW-1 in

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his cross-examination had further admitted that the signatures on Mark 'X' (Ex.PX) and Mark 'PY' (Ex.PY) and that of Ex.P1, which is the agreement to sell in question, bearing the signatures of Suhail Singh were identical and had been done by the hand of one and the same person. It is thus submitted that when the signatures of Suhail Singh are compared with the documents which were admittedly executed by Suhail Singh prior to the institution of the suit, then, the same were identical as those on the agreement (Ex.P1). The said DW1 had further submitted that the signatures of the defendant No.1 in the written statement (Ex.D1) and on the power of attorney i.e. Ex.S (page 33 of the trial Court record) were different and were not affixed by the same hand. It is submitted that from the said evidence, it is apparent that the defendants had tried to change his signatures, as the signatures on the written statement and also on the power of attorney are also not similar. It is submitted that on account of misreading of the evidence and documents, a perverse finding had been rendered by the 1st Appellate Court which deserves to be set aside. It is further submitted that even DW2 in his cross-examination had admitted the signatures of Suhail Singh and his own on the registered sale deed dated 11.06.1987 Ex.PX. It is argued that the above evidence as well as the positive evidence led by the plaintiff clearly showed that the agreement to sell was duly proved and the defence of defendant No.1 to the effect that the agreement to sell was not signed by him was completely a false defence.

5. Learned counsel for the appellant has further submitted that ancillary reason given by the 1st Appellate Court to allow the appeal is to the effect that the *khata* numbers as mentioned in the agreement to sell are different from the *khata* numbers as mentioned in the suit. In the said

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regard, it is submitted that no such objection was taken by the defendants in the written statement to the effect that the land mentioned in the agreement to sell is different from the suit land nor any issue was raised regarding the same. It is further submitted that no argument to the said effect was raised before the trial Court and thus, there can be no observations beyond pleadings. It is further submitted that a bare perusal of the agreement to sell as well as the number of the suit land would show that khasra number as well as the area of the land is the same, inasmuch as, in the agreement to sell, khasra number 87(6-0) and khasra number 92(8-0) had been mentioned which are the same as mentioned in the plaint. It is further submitted that even one of the *khata* numbers which has been mentioned i.e. 43/116 is absolutely the same as that mentioned in the plaint and that it is the second *khata* number which in the agreement to sell is mentioned as 45/119 is stated as 45/120 in the suit land. It is argued that it is a matter of settled law that *khewat/khata and khatoni* numbers are changeable and can change with the passage of time and upon the preparation of the new *jamabandi* but the khasra number does not change and remains the same. In support of his arguments, learned counsel for the appellant has relied upon the judgment of the Co-ordinate Bench of this Court in ***RSA No.1179 of 2021*** titled as “**Kamlesh Sharma (deceased) through LRs Vs. Babita**”, ***decided on 25.03.2025***. It is thus submitted that the judgment of the 1st Appellate Court deserves to be set aside and the judgment passed by the trial Court deserves to be upheld.

ABOUT THE RESPONDENTS/DEFENDANTS

6. A perusal of the paper-book would show on 15.03.1994 notice of motion was issued in the present Regular Second Appeal. On 03.05.1994, it was recorded that none had appeared on behalf of

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respondents No.1 and 2 despite service and they were proceeded against ex-parte. On 24.05.1994, the matter was admitted and even on the said date no one appeared on behalf of the respondents.

7. Subsequently, CM-6132-C of 2011 was filed, in which, notice of motion was issued to the respondents and also through their counsel and on 12.09.2011, Mr. Rajinder Sharma, Advocate had filed power of attorney on behalf of respondent No.1. In the order dated 12.09.2011, it was noticed that respondent No.2 was proceeded ex-parte on 03.05.1994 and respondent No.3 was a proforma party. The order dated 12.09.2011 is reproduced herein below: -

*“Present: None for the applicant-appellant.
Mr. Rajinder Sharma, Advocate and
Mr. H. S. Bhullar, Advocate for
Mr. A. S. Chahal, Advocate,
for respondent No.1.*

Mr. Rajinder Sharma, Advocate has filed power of attorney on behalf of respondent No.1. Respondent No.2 was proceeded ex parte on 03.05.1994. Respondent No.3 is reported to have died. Otherwise also, respondent No.3 is a pro forma respondent.

Reply to the application under Order 39 Rules 1 and 2 be filed by 17.11.2011.

SEPTEMBER 12, 2011”

8. On 17.11.2011, an application for stay was allowed and further alienation of the suit property was ordered to be stayed during the pendency of the Regular Second Appeal. On 09.01.2025, since respondent 3 was stated to be proforma party, thus, his service was dispensed with. On 08.07.2025, a Co-ordinate Bench of this Court was pleased to issue notice to respondent No.1 as well as his counsel for 08.09.2025. On 08.09.2025, the Co-ordinate Bench had observed that notice to respondent No.1 had been received back duly served and even counsel had been informed but

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however since nobody had put in appearance on behalf of respondent No.1, he was again proceeded ex-parte vide order dated 08.09.2025. The relevant portion of the said order dated 08.09.2025 is reproduced herein below: -

*“Present: Ms. Manveen Kahlon, Advocate for the appellant.
None for respondent No.1.
Service of respondent Nos.2 and 3 had been
dispensed with vide order dated 09.01.2025.*

Notice to respondent No.1 received back duly served. Even Mr. Rajinder Sharma, Advocate, who was representing him, has been duly informed via e-mail. Despite this, nobody has put in appearance on behalf of respondent No.1. As such, he is proceeded ex parte.

Learned counsel for the appellant requests for short adjournment so as to inspect the trial Court record and to provide written synopsis.

Adjourned to 17.09.2025.

September 08, 2025”

9. In spite of the contesting respondent No.1 having been again served, none appeared on behalf of respondent No.1 for three dates thereafter. Today also, none has appeared on behalf of the respondents.

10. From the above, it is apparent that respondents no.1 and 2 were served and were proceeded against ex-parte vide order dated 03.05.1994. Respondent No.1 was thereafter represented by his counsel and when the counsel stopped appearing, fresh notice was issued to respondent No.1 as well as to his counsel and in spite of respondent No.1 as well as his counsel having been served, no one has chosen to appear before this Court. With respect to defendant No.3/respondent No.3, it would be relevant to note that before the trial Court, counsel for respondents No.2 and 3 had not appeared. Moreover, once the trial Court had decreed the suit, the sole person who had filed the appeal before the 1st Appellate Court was defendant No.1 and neither respondent

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No.2/defendant No.2 nor respondent No.3/defendant No.3 had filed the appeal. Even in the suit filed by the plaintiff, the defendants No.2 and 3 were shown to be proforma parties. Thus, in view of the above and since the appeal is of the year 1993, this Court has heard the learned counsel for the appellant and has perused the paper-book as well as the trial Court record and is adjudicating the same.

ANALYSIS AND FINDINGS

11. The plaintiff-present appellant had filed a suit for possession by way of specific performance of the agreement to sell dated 24.12.1987 which as per his case was executed by defendant No.1 with respect to land measuring 14 kanal 0 marla bearing Khata Nos.43/116 and 45/120 Khasra No.87(6K-0M) min South 92(8K-0M) situated in Village Kaleke, Tehsil Baba Bakala, Distt. Amritsar. The prayer made in the said suit was for directing the defendants to execute the sale deed on payment of balance sale consideration price and to restrain the defendants from alienating the suit land in favour of anybody else.

12. It was the case of the plaintiff-appellant in the plaint that agreement dated 24.12.1987 was entered into between the plaintiff and defendant No.1 with respect to the land in question and the consideration fixed for the same was Rs.20,000/- per killa and that the plaintiff-appellant had paid an amount of Rs.10,000/- as earnest money and the balance was to be paid at the time of the execution of the sale deed which was to be done on or before 31st October, 1988. It was further the case of the plaintiff that the plaintiff had been requesting defendant No.1 from time to time to execute the sale deed and defendant No.1 had lingered on the matter and a legal notice dated 27.10.1988 was also given by the plaintiff to defendant No.1 to show that he was ready and willing to execute the sale deed and

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that on 31.10.1988, the plaintiff also appeared before the office of Sub-Registrar but defendant No.1 failed to turn up. It was further specifically pleaded in the plaint that the plaintiff had balance sale consideration with him and even rough draft of the sale deed was also got prepared by the plaintiff and that since defendant No.1 had failed to turn up, thus, the plaintiff had submitted an application before the Sub-Registrar, Baba Bakala for marking his presence. It was further pleaded that thereafter on 07.11.1988, another legal notice was served upon defendant No.1 giving him another chance to execute the same. It was pleaded that the plaintiff was and is ready and willing to perform his part of the contract and it was defendant No.1 who had failed to perform his part. In the plaint, it was stated that no relief was claimed against defendant Nos.2 and 3, (respondents No.2 and 3), as they were proforma defendants. When defendant No.1 did not execute the sale deed in spite of legal notice, the plaintiff immediately filed a suit on 29.11.1988.

13. Defendant No.1, who was the contesting defendant, had stated in his written statement that the suit was not maintainable as defendant No.1 had never executed or signed any agreement to sell. It was stated that the question of readiness and willingness did not arise as defendant No.1 had never entered into any agreement to sell. It would be relevant to note that in the entire written statement, no plea was taken that the suit property was any different from the property which had been mentioned in the agreement to sell. Written statement was also filed by defendant Nos.2 and 3, who had stated that no cause of action had accrued against them.

14. The trial Court, on 19.07.1989, had framed the following issues:-

“1. Whether defendant No.1 entered into an agreement to

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sell dt. 24.12.1987 in favour of the plaintiff regarding the suit land and received Rs.10,000/- as earnest money? If so its effect OPP

2. Whether suit is not maintainable?OPP

3. Whether plaintiff was ready and willing to perform his part of contract?OPP

4. Whether plaintiff is entitled to the decree for specific performance?OPP.

5. Whether the plaintiff is entitled to the injunction prayed for? OPP

6. Relief.”

15. Issues Nos.1 and 4 were taken up together and both the said issues were decided in favour of the plaintiff and decree of specific performance regarding the property in question was passed in favour of the plaintiff and against the defendants. The trial Court took into consideration the evidence of Santokh Singh-PW2 and Dalbir Singh-PW3, who were both the attesting witnesses of the agreement to sell dated 24.12.1987, which had been duly proved on record as Ex.P1. The evidence of Achhar Singh-PW1, who was the Deed Writer and the plaintiff who had appeared in the witness-box as PW4 was also taken into consideration. It was observed that Santokh Singh-PW2 was Lambardar of Village Kaleke and he was the attesting witness of the agreement and had specifically stated that the plaintiff and the defendant had signed the said agreement and that Rs.10,000/- was paid to the defendant by the plaintiff at the time of execution of the agreement to sell as earnest money. The evidence of PW1, who was stated to be a professional Deed Writer and had stated that the agreement was scribed by him at the instance of the defendant No.1 and who had admitted the contents to be correct and had put the signatures thereafter, was also taken into consideration. The fact that in spite of lengthy cross-examination, there was no material discrepancies so as to

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shake their credibility was noticed. The evidence of RS Bal-DW1, who was the handwriting expert examined by the defendant, was also taken into consideration and it was observed that DW1 in his cross-examination had admitted that signatures of the defendant No.1 on documents Ex.PX (earlier Mark X) and Ex.PY (earlier Mark Y) were identical to the one on the agreement in question which was exhibited as Ex.P1. It was further noted that the defendant No.1 while appearing in the witness-box had in his cross-examination admitted that the documents Ex.PX and Ex.PY had been executed by him and bore his signatures and thus, it was observed that even from the evidence of the expert, examined by defendant No.1, it was clear that the signatures on the agreement to sell Ex.P1 were those of the defendant. The rate of Rs.20,000/- per acre as mentioned in the agreement Ex.P1 was also considered to be the prevalent rate at the relevant time. Issue Nos.2 and 5 were also held in favour of the plaintiff and against the defendants.

16. Issue No.3 was with respect to the plaintiff being ready and willing to perform his part of the agreement and while deciding the said issue in favour of the plaintiff, the trial Court had taken into consideration the legal notice dated 27.10.1988 Ex.P2 along with its postal envelope Ex.P3 (containing original notice Ex.P3A) as well as copy of the order dated 31.10.1988 Ex.P4 which was passed by the Sub-Registrar on his application and another legal notice dated 07.11.1988 which had been duly proved on record as Ex.P5 along with postal receipt Ex.P6 and Ex.P7. From the above documents and evidence on record, the trial Court had concluded that the plaintiff was present before the office of Sub-Registrar on 31.10.1988 throughout the day for the purpose of execution and registration of the sale deed but it was the defendant who did not turn up.

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Accordingly, the suit of the plaintiff was decreed.

17. Only defendant No.1-Suhel Singh filed an appeal against the said judgment and decree. The First Appellate Court in para 8 had observed that admittedly defendant No.1 was owner of the suit land and that plaintiff-respondent No.1 therein had proved the agreement executed by defendant No.1 in his favour which was Ex.P1. The First Appellate Court, however, without discussing the evidence of the attesting witnesses, scribe and without taking into consideration the documents proved on record by the plaintiff, only on two cryptic points, allowed the appeal filed by defendant no.1 and set aside the well reasoned judgment of the trial Court. First point which had been taken into consideration was the evidence of DW1-R.S. Bal, Handwriting Expert and his report. The said evidence was completely misread and misconstrued, which aspect has been detailed hereinafter. Second issue which was taken into consideration by the First Appellate Court was that there was a difference in one of the *khata* numbers mentioned in the agreement and in the suit land, which observation is also perverse and against law, which aspect has also been detailed hereinafter.

18. That although as per the provision of Section 41 of the Punjab Courts Act, 1918, the High Court in Regular Second Appeal can interfere when the decision is contrary to law and on other parameters detailed in Section 41 of the Punjab Courts Act, 1918 and the interference is not limited to only on substantial questions of law, as is the case of a Regular Second Appeal filed under Section 100 CPC, however, this Court is of the opinion that following substantial questions of law arise in the present case:-

i) Whether the Ist Appellate Court fell in grave error in

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dismissing the suit of the plaintiff without considering the evidence of the attesting witnesses PW-2 and PW-3 and that of the scribe of PW-1 as well as the documents i.e., agreement to sell Ex.P1, legal notices Ex.P2 and P5, the order of Sub Registrar Ex.P4, thus, resulting in a cryptic and a perverse finding.

- ii) Whether the evidence of handwriting expert DW-1 has been misread and misconstrued and has wrongly been made the primary basis for setting aside the well reasoned judgment of the trial Court, moreso, when the standard signatures in the same have been taken from the written statement which has been filed in the present suit, instead of the signatures which the defendant No.1 has admitted on registered deeds dated 11.06.1987 Ex.PX and dated 07.08.1987 Ex.PY, which even as per DW1 were identical to the signatures of defendant No.1 on Ex.P1 (the agreement to sell in question)

19. The first grave error made by the Ist Appellate Court is with respect to non-consideration of the material evidence of the attesting witnesses of the agreement to sell dated 24.12.1987 Ex.P1 as well as the evidence of the scribe, as the said witnesses have fully proved the due execution of the agreement to sell Ex.P1. The true translation of the agreement to sell, which has been duly exhibited as Ex.P1, is reproduced hereinbelow:-

“Agreement of Sale

*We, **Suhel Singh**, son of Sulakhan Singh, son of Dula Singh, resident of Kaleke, Tehsil Baba Bakala, are First Party, and Jassa Singh, son of Inder Singh, son of Sucha Singh, resident of Kaleke, Tehsil Baba Bakala, are Second Party. That First*

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*Party's land measuring **14 Kanal-0 Marla** of First Party comprising in Khata No.43/116, 45/119, **Khasra No. 87/ 6-0 Min South 92/ 8-0**, type Nehri land **situated at area of Village Kaleke, Tehsil Baba Bakala**, which is under my (First Party) ownership. Now, I, being First Party, have executed an agreement of sale of abovesaid land in lieu of an amount of **Rs. 20,000/- (Twenty Thousand Rupees per acre)** together with all rights with Second Party, and today I, being First Party, have received **earnest amount of Rs. 10,000/-**, half of which comes to an amount of Rs. 5,000/- from the Second Party in cash. **The remaining balance amount will be received from the Second Party at the time of verification of registry on 31-10-88.** If I, being the First Party, fail to execute the registry by the fixed date in favor of the Second Party, then I shall be liable to pay an additional amount of Rs. 10,000/- as compensation even then I shall be bound to this writing. A Mutual agreement for sale of the property on the basis of earnest money has been finalized and written on 24.12.87 under Vasika number baya rahi 903.*

***Sd/- (in Punjabi)** s/d- Second Party sd/- Nambardar
Suhel Singh” Jassa Singh Santokh Singh Kaleke*

Thumb Impression Dalbir Singh s/o Teja Singh r/o Kaleke

(The translation placed on record on behalf of the appellant had certain mistakes and thus this Court had directed the translation to be done by the translation branch. The above translation has been done by the said branch).

A perusal of the above agreement would show that Suhail Singh (defendant no.1) had entered into agreement to sell with the plaintiff Jassa Singh with respect to land measuring 14 kanal 0 marla and the last date for registry was stated to be 31.10.1988 and the said Suhail Singh had

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received Rs.10,000/- from the plaintiff (Jassa Singh).

20. Two attesting witnesses i.e., PW-2 (Santokh Singh Lambardar) and PW-3 (Dalbir Singh) have been examined in the present case. The said witnesses have duly proved the due execution of the said agreement to sell Ex.P1 and have also further proved that the agreement was read over to Suhail Singh (defendant No.1), who had admitted it to be correct and that the said Suhail Singh (defendant no.1) had signed all the three sheets of the agreement to sell and Rs.10,000/- was paid as earnest money. The relevant portion of the evidence of PW-2 and PW-3 is reproduced hereinbelow:-

“PW2 Santokh singh Lambardar of V.Kaleke, distt. Asr.on SA

I know Soheli singh who belongs to my village. Agreement Ex.P1 was executed by him in favour of Jassa Singh s/o Inder singh plttf.on 24.12.87. Same was scribed by deed writer Achhar singh Bath. Agreement was read over to Soheli singh who admitted it to be correct and he signed in my presence on all the three sheets. Jasssa Singh had signed it and Dalbir singh thumb marked it. Rs. 10,000/-were paid as earnest money.

xxx xxx xxx

PW3 Dalbir singh s/o Teja singh s/o Wadhawa Singh, aged 22 yrs. cultivator, r/o V.Kaloke, Asr. on SA.

Agreement Ex.P1 was executed in my presence, Soheli singh signed in my presence. Jassa singh and Santokh singh also signed in my presence and I thumb marked it.”

21. The trial Court had rightly observed that there was nothing in the cross-examination to discard the said evidence.

22. Even the scribe of the said agreement to sell, Achhar Singh, was examined as PW-1, who had duly produced the original agreement as

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Ex.P1. The relevant portion of his evidence is reproduced hereinbelow:-

“PW1 Achhar singh deed writer, Baba Bakala, tehsil compound, on SA.

I am deed writer. I have seen the original agreement dt. 24.12.87. Same was scribed by me at the instance of Soheli singh, After scribing the same, it was read over to parties and they admitted it to be correct before putting their thumb impression and signatures. Soheli singh, Jasssa singh and Santokh singh signed in my presence and Dalbir singh thumb marked the same. I also entered the same in my deed writing register at sr.no.903. Parties also signed/thumb marked in my register brought today. Original agreement is Ex. P1.”

23. In addition to the above evidence, the plaintiff had also stepped into the witness box as PW-4 and had reiterated the fact that defendant no.1 (Suhail Singh) had signed all the three sheets of the agreement to sell and had duly proved on record the legal notice dated 27.10.1998 Ex.P2, postal receipts regarding the same as well as the second legal notice dated 07.11.1988 (Ex.P5). It was specifically stated by him that he was ready and is still ready to perform his part of the contract. He had also proved on record the document dated 31.10.1988 (Ex.P4) which had been duly signed by the Sub Registrar, Baba Bakala which clearly showed that the plaintiff was present before the Sub Registrar on 31.10.1988. The true translation of the said document is reproduced hereinbelow:-

“Letter pertaining to the documents necessary for the registry (Exhibit P-4)

District Amritsar

In the Court of Sub Registrar Tehsil Baba Bakala

Dated of Entry :31.10.1988

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Dated of Decision: 31.10.1988

Legal documents for office use

Documents required for the registry

Respected Sir,

It is requested that Suhail Singh son of Sulakhan Singh, son of Dulla Singh, resident of Village Kaleke, Tehsil Baba Bakala had made an agreement to sell for Rs. 20,000/- per acre of land, which is 14 Kanal 0 Marla khata no. 43/116, 45/119 Khasra no. 87, 6-0 min South 92,8-0 type of land canal in the area of Kaleke with me on 24.12.87 and Suhail had taken Rs. 10,000/- in cash from me as the earnest money to get the registry done by the last decided date that is 31.10.88. I have earlier also many times told Suhail that I am ready to get the registry done and had also given him a written notice. Suhail is keeping in abeyance me for getting the registry done. Today, I have come present with all preparation at Tehsil Baba Bakala at 9 AM to get the registry done but Suhail has not come present. My attendance should be marked.

I will be very thankful.

Dated 31.10.88

Jassa Singh, son of Inder Singh, son of Sucha Singh, resident of Village Kaleke Tehsil Baba Bakala Amritsar.

It is 5 o'clock in the evening, Jassa Singh, son of Inder Singh, son of Sucha Singh, resident of Village Kaleke Tehsil Baba Bakala has come present but there is no one present from the other party. Documents related to the case are recorded in office.

Sd/-

Sub Registrar Baba Bakala.

Dated 31.10.88”

24. The Hon'ble Supreme Court of India in the case of **Chennadi Jalapathi Reddy vs. Baddam Pratapa Reddy (Dead) Thr. Lrs. & Anr.** reported as **2019(9) JT 48** had observed that the evidence of the handwriting expert can rarely be given precedence over substantive

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evidence. The said case was also a case of specific performance in which the trial Court had decreed the suit for specific performance and the High Court had set aside the same primarily by relying upon the handwriting expert report. The Hon'ble Supreme Court of India, after taking into consideration the positive substantive evidence to prove the agreement, set aside the judgment of the High Court and upheld the judgment of the trial Court.

25. That the primary reliance sought to be placed by the Ist Appellate Court on the evidence of the handwriting expert to set aside the judgment of the trial Court is a grave error of law. Moreover, the evidence of the said handwriting expert has been completely misread and misconstrued. The relevant portion of the true translation of the evidence of said handwriting expert R.S. Bal (DW-1) is reproduced hereinbelow:-

“DW1

R.S. Bal DW1 was recalled for cross-examination on S.A.

*******By K.S. Rekhy***

I have not brought any degree or certificate regarding my educational qualifications with me today. I have handled approximately 2,000 cases upto date and have returned a significant number of cases. It is correct to suggest that the two signatures of Suhel Singh on page number of Exhibit D1, have not been affixed in my presence. Similarly the signatures of Suhel Singh have not been affixed on the Power of Attorney (Exhibit PS) in my presence. It is correct to suggest that Suhel Singh has not affixed any of the signatures affixed on the documents in the case file in my presence. It is correct to suggest that Suhel Singh has not signed the Written Statement and the Power of Attorney in my presence; for this reason, I am unable to state whether these are indeed the signatures of Suhel Singh. It is correct to suggest that the signatures of Suhel Singh on Mark X,

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Mark Y, and Exhibit P1 have been identical and were affixed by the same hand. It is correct to suggest that the signatures of Suhel Singh on the Written Statement (Exhibit D1) and the Power of Attorney (Exhibit PS) are different and were not affixed by the same hand.

RO & AC

sd/- R.S. Bal
(in English)

sd/-
(Illegible)”

(The translation placed on record on behalf of the appellant had certain mistakes and thus this Court had directed the translation to be done by the translation branch. The above translation has been done by the said branch.)

26. A perusal of the above evidence would show that DW-1 who is the witness of the defendant has stated that the signatures of the defendant on the sale deed dated 11.06.1987 (Mark X subsequently exhibited as Ex.PX), on the sale deed dated 07.08.1987 (Mark Y subsequently exhibited as Ex.PY) and on the agreement to sell in question dated 24.12.1987 Ex.P1 are identical and have been affixed by the same hand. It would be relevant to note that the said two documents i.e., (Ex.PX and Ex.PY) have been executed by the defendant prior to the present suit having been filed on 29.11.1988 and the defendant No.1, while giving his evidence as DW3 in his cross-examination has admitted his signatures on Ex.PX and PY. The relevant portion of the evidence of DW3 is highlighted in the subsequent paragraphs. It is thus apparent that although standard/admitted signatures on documents executed by the defendant prior to the suit were available and as per the evidence of the said handwriting expert DW-1 himself, the signatures were identical on the said documents as well as on Ex.P1 of the defendant, yet the said documents were not

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taken as the standard signatures by the defendant No.1 and instead the written statement filed in the present suit which was subsequent to the filing of the plaint was taken as the standard signatures. DW-1 in his cross-examination had further stated that the signatures of defendant no.1 (Suhail Singh) on the written statement Ex.D1 and on the power of attorney Ex.S were different and were not affixed by the same hand. Thus, as per the evidence of DW-1 himself, it is apparent that defendant no.1 had purposely changed his signatures on the written statement to establish a plea of his having not signed the agreement to sell and even the said signatures were different from the signatures on the power of attorney.

27. As has been stated hereinabove, Suhail Singh (defendant no.1) when appeared in the witness box as DW-3 has categorically admitted that he had seen the registered sale dated 11.06.1987 Ex.PX (earlier Mark X) and also the sale deed dated 07.08.1987 Ex.PY and admitted the signatures on the same. The true translation of the relevant portion of his evidence is reproduced hereinbelow:-

“DW3

Suhail Singh son of Sulakhan Singh son of Dulla Singh, aged 38 years, occupation Agriculture, resident of Village Kaleke on SA SA

xxxxxx

I have seen the sale deed Ex.PX which bears my signatures. This sale deed Ex.PX is correct. The Registry Mark X/A and Mark X/B bear my signature. Amarjit Singh put his testimony on the Ex.PX. It is correct that Santokh Singh appended his signatures as witness. It is correct that I had executed a sale deed on 7.8.1987 in favour of Jassa Singh, My signatures are correct on it and it was read over and after admitting the same as correct. I had appended my signatures on it. Santokh Singh had put his testimony on it.

My signatures are correct on Mark A, Mark B, Mark C and Mark D. This sale deed in Ex.PY.....

..... I do not know whether Jassa Singh had got marked his presence before the Sub Registrar. I am not ready to get executed sale deed registered.”

(The translation placed on record on behalf of the appellant had certain mistakes and thus this Court had directed the translation to be done by the translation branch. The above translation has been done by the said branch)

28. The said evidence when read along with the evidence of DW1 and also with the positive evidence led by the plaintiff leaves no matter of doubt that the signatures of the defendant no.1 on the agreement to sell Ex.P1 is identical to the signatures of said defendant no.1 on the registered sale deed dated 11.06.1987 and 07.08.1987 which had been duly exhibited as Ex.PX and PY and were prior to the date of filing of the suit. Even the evidence of DW-2 Amarjit Singh also further proved that the signatures of Suhail Singh on Ex.PX are his and that the said Amarjit Singh has also signed the said registered sale deed Ex.PX as witness. The Ist Appellate Court had completely misread and misconstrued the said evidence.

29. The Hon’ble Supreme Court of India in the case ***Chennadi Jalapathi Reddy (supra)***, apart from observing that the handwriting expert can rarely be given precedence over substantive evidence, had further observed that the report of the handwriting expert was liable to be rejected as most of the signatures taken of the defendant therein were of a period subsequent to the filing of the plaint and thus, could not have been used as a valid basis for comparison and their use for the said purpose casts serious doubt on the reliability of the entire report and the said report was discarded on the said ground alone. In the said case, one of the signatures

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which had been taken as standard signature were on the written statement in a prior suit and the other signatures were taken from the power of attorney and written statement in the suit in question and in the said circumstances, the Hon'ble Supreme Court had discarded the entire report. In the present case, only the signature on the written statement in the present suit has been taken as standard signature for the purpose of comparison with the signatures of the defendant on the agreement to sell Ex.P1. It is reiterated that even as per DW-1, the said signatures on the written statement of defendant no.1 are not found to be similar to that of defendant no.1 on the power of attorney Ex.PS. Thus, even the evidence of DW-1 and DW-3, which has been reproduced hereinabove as well as DW-2 further supports the positive evidence led by the plaintiff. The relevant portion of the judgment of the Hon'ble Supreme Court of India in the case of **Chennadi Jalapathi Reddy** (supra), which applies on all fours in the present case, is reproduced hereinbelow:-

“7. As mentioned supra, the High Court mainly relied upon the opinion evidence of DW-2, the handwriting expert, who opined that the signature of the first defendant on the agreement of sale Ext. A-1 did not tally with his admitted signatures.

8. By now, it is well-settled that the Court must be cautious while evaluating expert evidence, which is a weak type of evidence and not substantive in nature. It is also settled that it may not be safe to solely rely upon such evidence, and the Court may seek independent and reliable corroboration in the facts of a given case. Generally, mere expert evidence as to a fact is not regarded as conclusive proof of it. In this respect, reference may be made to a long line of precedents that includes Ram Chandra and Ram Bharosey v. State of Uttar Pradesh, AIR 1957 Supreme Court 381, Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR

1964 Supreme Court 529, Magan Bihari Lal v. State of Punjab, (1977) 2 SCC 210, and S. Gopal Reddy v State of Andhra Pradesh, 1996(3) RCR (Criminal) 153: (1996) 4 SCC 596.

We may particularly refer to the decision of the Constitution Bench of this Court in Shashi Kumar Banerjee (supra), where it was observed that the evidence of a handwriting expert can rarely be given precedence over substantive evidence. In the said case, the Court chose to disregard the testimony of the handwriting expert as to the disputed signature of the testator of a Will, finding such evidence to be inconclusive. The Court instead relied on the clear testimony of the two attesting witnesses as well as the circumstances surrounding the execution of the Will.

xxx xxx xxx

16. There is another reason why we are not inclined to place reliance on the opinion of the expert DW-2. From a perusal of his report Ext. B-2, it is evident that barring the signature on a written statement in a prior suit all other admitted signatures of the first defendant are of a period subsequent to the filing of the plaint (Le. on the vakalatnama and the written statement filed in this suit itself). These admitted signatures taken subsequent to the filing of the suit could not have been used as a valid basis of comparison, and their use for this purpose casts serious doubt on the reliability of the entire report Ext. B-2. Thus, the report was liable to be discarded on this ground alone, and was wrongly relied upon by the High Court.”

30. That even the secondary reason given by the Ist Appellate Court to the effect that the khata number in the civil suit is different from the khata number in the agreement to sell is absolutely perverse and baseless and in the said regard, the following aspects are required to be

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highlighted:-

- i). Firstly in the written statement filed by defendant no.1, no objection was taken to the effect that the suit land is different from the land which comprised in the agreement to sell and thus, no issue on the said aspect was framed. No argument was raised to the said effect by the defendant before the trial Court. It is thus, apparent that the Ist Appellate Court had build up a completely new point for the defendant without there being any pleadings or objection regarding the same.
- ii) A perusal of the agreement would show that the total land which is subject matter of the said agreement is 14 kanal 0 marla and the khasra number mentioned are khasra no.87(6-0) and khasra no.92(8-0) and the said land is stated to be situated at village Kaleka, Tehsil Baba Bakala. A perusal of the plaint would show that the total suit land also measured 14 kanal and is comprised in the same khasra number i.e., khasra no.87(6-0) and khasra no.92(8-0) and is situated in the same village i.e., village Kaleka, Tehsil Baba Bakala. In the agreement, there are two khata/ khatoni numbers mentioned which are 43/116 and 45/119. Even in the number of the suit land, khata no.43/116 has been mentioned and the only difference is with respect to the second khata / khatoni which has been mentioned as 45/120 instead of 45/119. The jamabandi for the year 1982-83 Ex.P8, which is on record also shows that khata / khewat number of the suit land is 43 and 45. Khatoni number of the suit land has been shown to be 116 and 119 and thus the only figure which is different in the suit is with respect to one

khatoni, which is 119 in the agreement and 120 in the suit. The khasra numbers are the same. It is a matter of settled law that khasra numbers / killa numbers do not change and remain the same whereas khewat and khatoni numbers are changeable and change with the passage of time, moreso, when new jamabandi is prepared. For the exact identity of the land, it is the khasra numbers/ killas number which are relevant and in the present case, there is no dispute that both the khasra numbers in the agreement to sell as well as in the plaint are the same. The co-ordinate Bench of this Court in the case of ***Kamlesh Sharma (deceased) through Lrs vs. Babita, RSA-1179-2021 decided on 25.03.2025*** has observed as under:-

“18. Thus, learned trial Court correctly observed **that it is settled law that Khewat and Khatoni number are changeable and change with the passage of time and upon the preparation of new jamabandi, but it is also settled law that khasra or killa number does not change and remains the same.**”

31. It is for the above reason that there was no dispute raised by defendant no.1 in the written statement with respect to the identity of the property nor was there any issue framed on the same. In case any such objection had been raised, even the change of one khatoni would have been explained. The suit land is fully identifiable as per the specific khasra numbers and thus, the judgment of the Ist Appellate Court on the said aspect also deserves to be set aside.

32. Thus the questions of law framed in para 16 are answered in favour of the appellant and against the respondents.

33. From the above document and evidence, the due execution of

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the agreement to sell as well as the fact that the plaintiff was ready and willing to perform his part of contract is duly proved. Additionally, it would be relevant to note that the aspect with respect to readiness and willingness is also proved from the fact that the suit was filed immediately after the legal notice having been given i.e., on 29.11.1988, which is within one month from the last date for execution of the sale deed, given in the agreement to sell i.e. 30.10.1988.

34. Thus, the suit of the plaintiff deserves to be decreed. Although in normal circumstances the plaintiff was only required to pay the balance sale consideration but keeping in view that the transaction is of the year 1988, the learned counsel for the plaintiff has fairly submitted that they would deposit the balance sale consideration within a period of three months from today along with interest @ 9% p.a. from 31.10.1988 till the date of the said deposit. The same is a fair stand taken on behalf of the appellant.

35. It would be relevant to note that the present Regular Second Appeal has been filed under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 of CPC and that in paragraph 27 of the judgment of the Constitutional Bench (Five Judges Bench) of the Hon'ble Supreme Court in the case of ***Pankajakshi (dead) through legal representatives and others Vs. Chandrika and others and other connected matters*** reported as ***(2016) 6 Supreme Court Cases 157***, it was observed that since Section 97(1) of the Code of Civil Procedure (Amendment) Act, 1976, has no application to Section 41 of the Punjab Courts Act, it would necessarily continue as a law in force. Section 41 of the Punjab Courts Act provides that an appeal would lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court on any of the grounds

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mentioned therein and one such ground, i.e., ground No.(a) is when the decision is contrary to law or to some custom or usage having the force of law. The finding of the 1st Appellate Court, as has been discussed hereinabove, has been found to be contrary to settled law and thus, deserves to be set aside.

36. Keeping in view the above said facts and circumstances, the present regular second appeal is allowed and the judgment of the Ist Appellate Court dated 03.09.1993 is set aside and the judgment of the trial Court dated 02.12.1991 is upheld, with the only modification that instead of depositing the balance sale consideration, the appellant would deposit the balance sale consideration along with interest @ 9% per annum from 31.10.1988 till the date of deposit, within a period of three months from today, as undertaken before this Court.

January 31, 2026
naresh.k

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes