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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA-2735-1993 (O&M)
Date of decision: 27.04.2026

Gurbaksh Singh (deceased) through his LRs

...Appellant(s)

Versus

Sardara Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. R.S. Sekhon, Advocate and
Ms. Sangeeta Devi, Advocate for the appellant(s).

Mr. Anurag Chopra, Advocate
(Through Video Conferencing) and
Mr. Vardaan Seth, Advocate for the respondents.

VIKAS BAHL, J. (ORAL)

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CHALLENGE IN THE PRESENT APPEAL

1. Defendant had filed the present Regular Second Appeal under Section 41 of the Punjab Courts Act, 1918. The same is now being pursued by the LR's of the defendant.



2. Challenge in the present appeal is to the judgment dated 02.08.1993 vide which the 1st Appellate Court had set aside the judgment of the trial Court dated 17.10.1990 and had decreed the suit of the plaintiffs/respondents and had granted a decree for possession of the suit land by way of specific performance of the agreement to sell dated 16.08.1984 (Ex.P1).

ARGUMENTS ON BEHALF OF THE APPELLANT:-

3. Learned counsel for the appellant has submitted that in the present case, as per the case of the plaintiffs, the agreement was extended from 16.08.1986 to 19.06.1987 but no reason was given as to why the said extension was done. It is submitted that as per the version of the plaintiffs, the extension was sought by the present appellant. Learned counsel for the appellant has submitted that there was tampering in the date of extension, inasmuch as, a perusal of Ex.P3 would show that the date of performance has been extended to 19.06.1987 however the figure '6' is written in dark ink as compared to other figures. Learned counsel for the appellant has further submitted that in the agreement to sell, it had been mentioned that the possession has been handed over to the plaintiffs whereas PW2-Amarjit Singh in his cross-examination had admitted that the possession is with the defendant. It is further submitted that the extension (Ex.P3) is stated to be attested by one Sohan Singh however the said Sohan Singh had not been examined by the respondents-plaintiffs. It is submitted that the said circumstances clearly show that there is suspicion with respect to execution of the agreement to sell and once suspicion exists, then, the relief of specific performance of the agreement should not be granted.



4. It is submitted that in fact the defendant had been dealing with the father of the plaintiffs and in the year 1977, the present appellant had taken a loan from the father of the plaintiffs for an amount of Rs.3000/-, which amount was returned by the present appellant in May, 1987 and regarding the same receipt (Ex.D1) had been duly produced on record. It is submitted that at the time of giving of the loan, the father of the plaintiffs had taken thumb impressions of the appellant-Gurbux Singh on various papers and apparently, the said papers had been misused to convert the same into the agreement to sell (Ex.P1) and extension (Ex.P3). It is further submitted that the stamp paper for the agreement to sell dated 16.08.1984 had been purchased on 06.07.1984 i.e., a period of 40 days prior to the agreement to sell. It is submitted that in the said circumstances, the suit of the plaintiffs for specific performance should have been dismissed and at any rate, the main relief of specific performance should not have been granted. It is thus, prayed that the judgment of the First Appellate Court be set aside.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:-

5. Learned counsel for the respondents has submitted that in the present case, the agreement to sell dated 16.08.1984 had been duly proved on record as Ex.P1 and a perusal of the same would show that the last date for execution of the sale deed was 16.08.1986 and that the extension dated 16.08.1986 has also been duly exhibited as Ex.P3. It is argued that the agreement to sell duly bears the thumb impressions of the present appellant-defendant, which fact has not been disputed on behalf of the defendant during the course of arguments, rather has been admitted. It is submitted



that the said agreement to sell had been entered by the Scribe (PW1-Hans Raj), who is a regular scribe, in his register which register had also been duly exhibited as Ex.P2. It is further submitted that the plaintiffs had even gone to the office of Sub Registrar on 19.06.1987 (Ex.P4) to get their presence marked but the defendant never came to execute the sale deed. It is further pointed out that the legal notice dated 16.07.1987 (Ex.P5) was also issued by the counsel on behalf of the appellants and immediately thereafter, the suit was filed on 31.07.1987.

6. It is submitted that PW1-Scribe of the agreement to sell (Ex.P1) namely Hans Raj had been examined who had duly proved the agreement to sell as well as the entry in his register (Ex.P2). It is further submitted that plaintiff-Amarjit Singh was examined as PW2 and he had also fully supported the case of the plaintiffs and even Mohinder Singh, who was the attesting witness of the agreement to sell (Ex.P1), was duly examined as PW3 and he had also duly proved the agreement to sell (Ex.P1). It is submitted that in the said circumstances, heavy onus was upon the defendant to rebut the documentary and the oral evidence on record and for the said purpose, the sole document which had been produced on record by the defendant was Ex.D1, a perusal of which does not even remotely show that the same is relatable to the agreement to sell (Ex.P1). It is submitted that in the said Ex.D1, no reference has been made to the agreement to sell nor there is statement that the agreement to sell (Ex.P1) stands cancelled nor the same is signed by any of the plaintiffs. It is argued that the defence of the present appellant-defendant is that there was a loan taken by him from the father of the plaintiffs in the year 1977, however, no document of the



said year has been exhibited on record and has further submitted that the argument to the effect that the stamp paper was purchased 40 days prior to the agreement to sell also does not cut much ice as the year of purchase of the said stamp paper is 1984 and not 1977. It is submitted that once the defendant had denied the agreement to sell and it is established that the agreement to sell is proved, it does not lie in the mouth of the appellant to raise pleas with respect to validity of the extension or on the aspect of readiness and willingness. It is thus, prayed that the present appeal be dismissed.

ANALYSIS AND FINDINGS

7. This Court has heard learned counsel for the appellant as well as learned counsel for the respondents and is of the opinion that the judgment of the 1st Appellate Court is in accordance with law and deserves to be upheld and the present Regular Second Appeal deserves to be dismissed, for the reasons stated hereinafter.

8. The respondents/plaintiffs had filed a suit for specific performance of the agreement to sell dated 16.08.1984 stated to have been executed by the defendant/present appellant in their favour with respect to land measuring 32 Kanals comprised in Rect. No.22 Killa No.19(8-0), 20(8-0), 21(8-0), 22(8-0), situated in the area of village Rukna Begu, Tehsil and District Ferozepur. In the alternate, a prayer was made for recovery of amount of Rs.54,600/-. It was the case of the plaintiffs that the defendant had entered into an agreement to sell dated 16.08.1984 with respect to the land in question and had received an amount of Rs.27,300/- as earnest money. It was stated that the rate was fixed at Rs.12,000/- per Killa (Total



12,000 x 4 = 48,000) and the sale deed was to be executed on 16.08.1986 and that thereafter the time was extended from 16.08.1986 to 19.06.1987. It was further the case of the plaintiffs that on 19.06.1987, the plaintiffs were present at the office of the Sub-Registrar, Ferozepur, alongwith the balance amount and had the necessary expenses for the execution and registration of the sale deed but the defendant did not turn up and the plaintiffs got their presence marked in the office of Sub-Registrar, Ferozepur on 19.06.1987. It was further pleaded that on 16.07.1987 the plaintiffs through their counsel served a legal notice on the defendant, requiring him to get the sale deed of the abovesaid land executed and registered in favour of the plaintiffs, within one week from the receipt of the said notice but since the defendant did not execute the sale deed, thus, the suit was filed on 31.07.1987. The plaintiffs had specifically stated in the plaint that they had been and still were ready and willing to perform their part of the agreement and were ready to pay the balance consideration of Rs.20,700/-.

9. The said suit was opposed by the defendant/present appellant and the plea taken in the written statement by the defendant was that the defendant had a dealing with Mangal Singh, who was the father of the plaintiffs and the defendant had taken a loan of Rs.3,000/- from him in the year 1977 and the said Mangal Singh had obtained his thumb impressions on some papers without explaining the same to the defendant. It was further the case of the defendant that he had paid a sum of Rs.27,875/- on 27.05.1987 to the said Mangal Singh son of Santa Singh but in spite of assurance, the said Mangal Singh did not return the relevant papers and thus, fraud had been played upon the defendant.



10. The trial Court had framed the following issues: -

1. *Whether the defendant entered into an agreement for the sale of the suit land with the plaintiff and executed an agreement in this behalf on 16.8.1984 receiving the sum of Rs.27,300/- as earnest money? OPP.*
2. *Whether the plaintiffs always remained willing and ready to perform the part of the contract? OPP.*
3. *Whether the plaintiffs have no cause of action to file the suit against the defendant? OPD.*
4. *Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD.*
5. *Whether the agreement, in dispute was obtained by playing fraud by the plaintiffs and their father? OPD.*
6. *Relief.”*

11. Issues No.1 and 5 were held against the plaintiffs by the trial Court although it was observed that the thumb impressions of the defendant on the agreement to sell was admitted. The trial Court had observed that there were suspicious circumstances in the execution of the agreement to sell and had also placed reliance upon the receipt (Ex.D1), relied upon by the defendant. Issue No.2 with respect to readiness and willingness was also decided against the plaintiffs. Issue No.3 was decided in favour of the plaintiffs and with respect to issue no.4, it was observed that the plaintiffs had made good the deficiency in the Court fee. On the basis of the said findings, the suit filed by the plaintiffs was dismissed.

12. The respondents/plaintiffs filed an appeal against the said judgment and decree and the 1st Appellate Court vide judgment and decree dated 02.08.1983 allowed the said appeal and decreed the suit of the respondents/plaintiffs. While allowing the said appeal, the 1st Appellate Court observed that the agreement to sell in question was duly proved on record as ExP1 and the extension was also proved as Ex.P3. The evidence given by PW-3 (Mohinder Singh), who was the attesting witness of the



agreement and PW-1, who was the scribe, was taken into consideration. It was further observed that the defendant had admitted his thumb impressions on the agreement (Ex.P1). With respect to receipt (Ex.D1), it was observed that the said transaction was between Mangal Singh and defendant and not with the plaintiffs and was a completely different transaction and had no relevancy with the execution of the agreement to sell dated 16.08.1984 (Ex.P1). It was further observed that there was nothing to show that the agreement or the endorsement was forged and fabricated. A reference was also made to the fact that the agreement was scribed by a regular scribe and an entry in this regard was also made in the register of the scribe (Ex.P2) which was thumb marked by the parties and that there was no evidence on record to show that the scribe or the attesting witnesses had connived with Mangal Singh, father of the plaintiffs, to fabricate the agreement (Ex.P1) and accordingly, the agreement dated 16.08.1984 (Ex.P1) and payment of earnest money of Rs.27,300/- were found to be duly proved and the findings of the trial Court on the said aspect were thus reversed.

13. With respect to the aspect of readiness and willingness, the 1st Appellate Court had observed that apart from the fact that Amarjit Singh plaintiff had appeared as PW2 and had deposed that he was ready and willing to perform his part of the agreement, Ex.P4 which was an application before the Sub-Registrar showing that the plaintiff had gone to the office of the Sub-Registrar on the appointed date along with the balance consideration but the defendant had not turned up, was also taken into consideration. It was held that the plaintiffs were and have always been ready and willing to perform their part of the agreement/contract and



accordingly, the appeal was allowed.

14. In the present case, a perusal of the documents which have been duly exhibited as well as the oral evidence would clearly show that the agreement to sell dated 16.08.1984 as well as the fact that the plaintiffs are and were always ready and willing to perform their part of the contract has been duly proved on record. The documents which duly prove the abovesaid two aspects are first being discussed. Ex.P-1 is the agreement to sell dated 16.08.1984. A perusal of the same would show that it was scribed by Hans Raj, who had been examined as PW-1 and was attested by Mohinder Singh witness, who had been examined as PW-3. The said agreement had also been signed by one of the plaintiffs Amarjit Singh, who had been examined as PW-2 in support of the said agreement. The agreement also carries the thumb impression of Gurbux Singh-defendant/appellant and the said thumb impression has not been shown to be forged or fabricated. There is no report of any expert to state that the said thumb impression is not of Gurbux Singh, rather as has been detailed hereinabove, it was the case of the defendant in the written statement that his thumb impressions had been obtained on some papers and during the course of arguments before this Court, the fact that the said agreement Ex.P1 bears the thumb impression of Gurbux Singh has not been disputed.

15. A perusal of the agreement to sell further reveals that the defendant had received earnest money of ₹27,300/- from the plaintiffs in the presence of the marginal witnesses. The stamp on the agreement to sell was purchased on 06.07.1984, which date has been highlighted by the counsel for the appellant/defendant and was thus much subsequent to the alleged



loan, stated to have been taken by the defendant from the father of the plaintiffs in the year 1977. Thus, the fact that the stamp paper was purchased on 06.07.1984 does not in any way substantiate the defence of the defendant/present appellant which is to the effect that he had taken loan in the year 1977, rather further proves the agreement to sell as the said stamp was taken prior to the execution of the agreement to sell. The said agreement to sell (Ex.P1) has not even remotely been shown to be a forged or a fabricated document.

16. Ex.P2 is the register of the scribe wherein the entry of the agreement has been made. The same had been duly produced and proved by Hans Raj (PW-1) and nothing has been shown to this Court that the said document is either forged or fabricated. Ex.P3 has also been duly proved on record and the same is the extension vide which the last date for execution of the sale deed was extended from 16.08.1986 to 19.06.1987. The said document also bears the thumb impression of Gurbux Singh, which are not shown to be forged or fabricated and in fact during the course of arguments have not been disputed to be the thumb impressions of Gurbux Singh. The said extension has also been signed by one of the plaintiffs Amarjit Singh, who had appeared as PW-2 and had fully supported the factum with respect to the extension. The argument raised on behalf of the appellant with respect to the said extension is that the figure '6' in the date i.e. 19.06.1987 is darker than other figures. The same would not in any way help the defendant/appellant, inasmuch as, it is not the case of the defendant that the registration of the sale deed was extended to some other date. Moreover, the earlier date for execution of the sale deed was 16.08.1986 and the suit has



been filed on 31.07.1987 and the said suit was within limitation even from the said date, thus, nothing substantial hinges in the present case on the fact as to whether the extended date for the execution of the sale deed was 19.06.1987 or was 19th day of some other month of the year 1987. At any rate, the appellant/defendant has not disputed the thumb impression of Gurbux Singh on the said extension. In fact the execution of the writing (Ex.P3) further supports the case of the plaintiffs, inasmuch as, in case the plaintiffs had to misuse the thumb impression of the defendant, as is his case, then, in the agreement to sell itself the plaintiff could have mentioned the date of registration of the sale deed as 19.06.1987 and would not have to execute/write two documents, one being the agreement to sell (Ex.P1) and other being the extension of time (Ex.P3).

17. On the aspect of readiness and willingness, it would be relevant to highlight that Ex.P4 is an application vide which one of the plaintiffs had got his attendance marked before the Sub Registrar on the appointed date and there is nothing on record to show that the defendant had also gone to the Sub Registrar, rather it was his case that he had never entered into any agreement to sell and thus he was estopped even from questioning the readiness and willingness on behalf of the plaintiff. Further, Ex.P5 dated 16.07.1987 is a legal notice which was issued by the plaintiffs through their counsel and in the same, it was specifically stated that the defendant was being called upon to execute the sale deed within a period of seven days from the receipt of the notice. The receipts regarding the same have been placed on record as Ex.P-6 and Ex.P7. The suit was also filed immediately thereafter on 31.07.1987. The said documents fully support the case of the plaintiffs.



18. In addition to the above documentary evidence, even the oral evidence fully supports the case of the plaintiffs and fully proves the agreement to sell, extension as well as the fact that the plaintiffs are and were always ready and willing to perform their part of the agreement. Attesting witness of the agreement to sell i.e., Mohinder Singh had been examined as PW3 and in his examination in chief, he had stated that he knew the parties personally and had further proved the due execution of the agreement to sell as well as payment of the earnest money and also the fact that the agreement to sell was read over and explained to the parties including Gurbux Singh-defendant. Relevant portion of the evidence in chief of the said PW3 is reproduced hereinbelow:-

“P.W.3 on S.A.

Mohinder Singh s/o Bhagat Singh s/o Kesar Singh aged 52 years, cultivator r/o Malwal.

I know the parties personally. I have seen the agreement Exhibit P1. It was scribed by Hans Raj at the instance of the defendant Gurbux Singh in the Tehsil complex of Ferozepur. Gurbux Singh agreed to sell his four acres of land at the rate of Rs.12,000/-per acre to the plaintiffs. A sum of Rs.27,300/-was paid to Gurbux Singh by Amarjit Singh plaintiff in my presence. Hans Raj after having scribed the agreement P1 had readover and explained the same to the parties and then Gurbux Singh defendant thumb marked the same and signed by Amarjit Singh and myself. Baldev Krishan also signed the document in token of its attestation. The cash was handed over by Amarjit Singh plaintiff to Gurbux Singh defendant who had counted the same in my presence. The agreement was scribed about 5 ½ years back. As per the terms of the agreement the sale was to



be completed within two years of the execution of the agreement.”

19. Nothing has been highlighted on behalf of the appellant from the cross-examination of the said witness so as to shake the veracity of the evidence given by the said witness.

20. PW1 who was the Scribe of the agreement to sell, had also been examined by the plaintiffs. PW1 in his evidence had stated that the entry regarding the agreement was made in the register at Sr. No.554 dated 16.08.1984 and that the defendant-Gurbux Singh had thumb marked the same. Relevant portion of the said evidence is reproduced hereinbelow:-

“PW1 Hans Raj son of Har Kishan Lal aged 52 years, Document Writer Tehsil Compound, Ferozepore on SA

I am the scribe of agreement dated 16.8.84 It was scribed by me at the instance of Gurbux Singh. Amarjit Singh paid a sum of Rs.27300/- to Gurbux Singh in my presence. The agreement was read over to Gurbux Singh who thumb marked the same after admitting it to be correct. Baldev Krishan and Mohinder Singh were the attesting witnesses. Amarjit Singh one of the proposed vendee also signed the agreement. The agreement is Ex.P1. An entry was made in the register about the agreement in question at serial No.554 dated 16.8.84 and Gurbux Singh thumb marked the same. Ex. P2 is the said entry of my register. The endorsement dated 16.8.86 about the extension of date is also in my hand and is Ex.P3. It was made at the direction of both the parties and the same was thumb marked by Gurbux Singh after admitting the endorsement to be correct. It was attested by Sohan Singh and Amarjit Singh also signed Ex.P3.”

21. Nothing has been highlighted on behalf of the appellant from



the cross-examination of the said witness so as to shake the veracity of the evidence given by the said witness also.

22. One of the plaintiffs i.e., Amarjit Singh had also been examined as PW2 and he had also fully supported his case and had proved due execution of the agreement to sell and also the fact that he was and is ready and willing to get the sale deed executed. Additionally, PW4-Mangal Singh who was the father of the plaintiffs had also been examined, who had also supported the case of the plaintiffs and had submitted that there was no agreement between him and Gurbux Singh for purchase of the suit land. The abovesaid documentary and oral evidence fully proves the case of the plaintiffs and shows that the findings of the First Appellate Court holding that the agreement to sell was duly proved, as well as the fact that the plaintiffs are and always were ready and willing to perform their part of the agreement, are in accordance with law and thus, are accordingly upheld.

23. The defence set up by the defendant-appellant to the effect that in the year 1977, a loan had been taken by the defendant from the father of the plaintiffs and the plaintiffs have misused the thumb impressions taken at the said time and had converted the same into agreement to sell and further his case that he had repaid the said loan of Rs.3000/- on 27.05.1987 by paying an amount of Rs.27,875/- is not even remotely substantiated in the present case. In support of the said plea, sole document which had been produced by the defendant-appellant is receipt Ex.D1. The said stand as well as receipt Ex.D1 do not further the stand of the defendant and the following points demonstrate the said aspect:-

i) There is no document of the year 1977 with respect to the said loan



transaction, which has been highlighted before this Court.

- ii) The receipt Ex.D1 has not been signed by the plaintiffs and does not make any reference to the agreement to sell, much less, the fact that the said agreement to sell stands cancelled. It does not even mention that the papers which were thumb marked by the defendant for the purpose of the loan, are being returned or stand cancelled. There is nothing on record to even remotely explain as to how the amount of Rs.3000/- has swelled to Rs.27,875/- and no details with respect to the rate of interest or any other aspect have been mentioned in the said receipt nor any such explanation has been given before this Court. As has been stated hereinabove, loan as per the defendant is of the year 1977 whereas stamp for the agreement to sell had been purchased on 06.07.1984 and thus, it cannot be said that the writing on the said stamp paper was on blank papers which were thumb marked by the defendant at the time of taking of loan in the year 1977, as is the stand taken by the defendant before this Court.
- iii) DW1-Bohar Singh in his cross-examination had admitted that it was correct that in Ex.D1 neither the details of the land had been mentioned nor it had been written as to for what purpose and at what interest the amount was taken.

24. The First Appellate Court has thus rightly held that the said receipt Ex.D1 is completely a separate transaction and has nothing to do with the agreement to sell dated 16.08.1984. Other aspects which have been also been highlighted on behalf of the appellant would not even remotely call for setting aside the well reasoned judgment of the First Appellate



Court nor it does bring the case of the appellant within the parameters of Section 41 of the Punjab Courts Act, 1918 for interference by this Court in the Regular Second Appeal.

25. Keeping in view the abovesaid facts and circumstances, the judgment of the First Appellate Court dated 02.08.1993 is upheld and the present Regular Second Appeal is dismissed.

26. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

27.04.2026

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No