

101 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA-2840-1993 (O/M)

Date of decision : 15.01.2026

Joginder Singh

..... Appellant

Versus

Agya Ram and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Vikas Singh, Senior Advocate with  
Ms. Anamika Sheoran, Advocate,  
for appellant.

Mr. Hari Om Sharma, Advocate  
for respondents.

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HARSH BUNGER, J. (ORAL)

1. For convenience, the parties herein are being addressed as per their status in the original suit.

2. This is plaintiff's Regular Second Appeal, challenging judgment and decree dated 18.01.1991, passed by learned Additional Senior Sub Judge, Jagadhri and also judgment and decree dated 13.09.1993, passed by learned Additional District Judge, Jagadhri, to the extent that the relief of specific performance of agreement to sell was denied to the plaintiff.

3. Briefly, appellant/plaintiff (Joginder Singh) filed a suit for specific performance of an agreement dated 11.03.1979 in respect of shops/plots No. 1 to 5 and another for two shops No. 26 and 27, situated

at Mahabir Market, Railway Workshop Road, Yamuna Nagar. In the alternative, prayer was made for recovery of Rs. 10,350/-.

3.1 It is the pleaded case of plaintiff that respondent No. 1/defendant No. 1 (Agya Ram) entered into an agreement to sell dated 29.11.1978 for sale of two shops No. 26 and 27, situated at Mahabir Market, Yamuna Nagar, by obtaining Rs. 1,000/- as earnest money and sale deed was to be executed on or before 13.03.1979, on payment of balance consideration of Rs. 4,000/-. It was averred that at the time of execution of said agreement, plaintiff was put into physical possession of these two shops and that he was using the same for residential purposes. It is further averred that plaintiff was ready and willing to perform his part of contract by getting the sale deed executed in his favour on or before 13.03.1979; however, defendant No. 1 (Agya Ram) failed to do so and he again entered into another agreement to sell for sale of seven shops (including the two aforesaid shops). The said agreement is stated to have been reduced into writing on 11.03.1979 and at that time, plaintiff claimed to have paid Rs. 6,350/- as price of the shops in advance. It was categorically stated by plaintiff that the sale deeds were to be executed by original owners, namely, Sukhdev Singh (defendant No. 3) and Dalbir Singh alias Balbir Singh (defendant No. 4); who were stated to be minor at that time.

3.2 According to plaintiff, defendant No. 1 (Agya Ram) had assured him that the sale deed would be executed by defendants No. 3 and 4 upon their attaining age of majority. The possession of the shops was also claimed to be that of plaintiff.

3.3 Plaintiff further claimed that in the month of May 1980, defendant No. 1 (Agya Ram) received balance consideration of Rs. 4,000/- from plaintiff on the pretext that defendants No. 3 and 4 had become major and that they were willing to execute the sale deed in favour of plaintiff. Accordingly, it was asserted by plaintiff that defendant No. 1 (Agya Ram) obtained the full consideration in respect of shops; however, on 01.10.1980, defendant No. 2 (Kaushalya Devi wife of Shri Agya Ram) served a registered notice upon plaintiff, claiming herself to be owner of shops by claiming that she had purchased the same from defendants No. 3 and 4, vide sale deed dated 27.05.1980.

3.4 Plaintiff claimed that aforesaid sale deed dated 27.05.1980 was the result of fraud and misrepresentation and, therefore, not binding upon the right of plaintiff and that defendants No. 1, 3 and 4 were bound by the terms and conditions of the agreement dated 11.03.1978. With the aforesaid averments, prayer was made for decreeing the suit for specific performance of agreement dated 11.03.1978.

3.5 On the other hand, defendant No. 1 (Agya Ram) appeared in the suit and submitted his written statement; wherein he denied entering into any agreement of sale with plaintiff in respect of suit property by getting any sale consideration. He also denied that he had ever handed over the possession of disputed shops to plaintiff. Accordingly, prayer for dismissal of suit was made.

3.6 Defendant No. 2 (Kaushalya Devi) also denied the claim of plaintiff. She stated that infact two shops were in possession of plaintiff

as a tenant and after purchasing the shops from defendants No. 3 and 4, she had become the owner and landlady of the shops.

3.7 It appears that upon demise of defendant No. 2, her legal heirs were brought on record; who also controverted the stand of plaintiff by filing their respective written statements; wherein they claimed themselves to be the absolute owners of the suit property.

3.8 Even defendants No. 3 and 4 contested the claim of plaintiff by filing their separate written statements; wherein it was categorically stated that defendant No. 1 (Agya Ram) was neither owner; nor in possession of disputed property, therefore, he had no authority to enter into an agreement to sell in respect of suit property. It was stated that their father Harbans Singh was the owner of suit property and after his demise, defendants No. 3 and 4 inherited the same and they sold the said property to defendant No. 2 (Kaushlaya Devi) being absolute owner thereof. With the aforesaid pleas, they also prayed for dismissal of the suit.

3.9 The plaintiff controverted the stand taken by defendants by filing a replication.

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

- “1. Whether the defendant no. 1 entered into two valid agreements for sale of the suit property with the plaintiff ? OPP
2. Whether the plaintiff has always been ready and willing to perform his part of the contract ? OPP
3. If issues no. 1 and 2 are proved, whether the plaintiff is entitled to specific performance of the contract of sale. If so, on what terms ? OPP

4. *Whether defendant No. 2 is a bonafide purchaser for valuable consideration ? If so, to what effect ? OPD*
5. *Whether the suit is liable to be stayed u/s 10 CPC as alleged ? OPD*
6. *Whether the suit is within limitation ? OPP*
7. *Whether defendant No. 1 had an authority to enter into any agreement on behalf of defendants no. 3 and 4. If so, to what effect ? OPP*
8. *Whether the suit is not maintainable against defendants no. 3 and 4 ? OPD*
9. *Whether the agreement dated 28.11.1978 and 11.3.1978, are illegal, null and void and not binding on the defendant no. 2 a to 2-i as alleged in para no. 1 of the amended written statement ? OPD*
10. *Relief.”*

3.11 In order to prove his pleaded case, plaintiff examined PW1 Raj Kumar, PW2 Savitri wife of plaintiff, PW3 Joginder Singh and PW4 Jhanda Singh and further tendered documents i.e. agreement deed Ex. P1, copy of order in complaint case and photostat copy of agreement Ex. P2.

3.12 On the other hand, defendants had examined DW 1 N.K. Jain, Handwriting expert, DW2 Agya Ram, DW3 Mohinder Kumar, DW4 Mohan Lal and Agya Ram DW5. They had also tendered documents i.e. Ex. DW4/II sale deed, Ex. DW 4/2 site plan, Ex. DW1/12 expert report, contested copies of sale deeds etc.

3.13 The trial Court, after considering the pleaded case of respective parties and also the evidence/material available on the record, dismissed the suit, filed by appellant/plaintiff, vide judgment and decree dated 18.01.1991.

3.14 Being dis-satisfied, plaintiff preferred an appeal before learned Additional District Judge, Jagadhri, which was partly allowed, vide judgment and decree dated 13.09.1993, whereby trial court judgment and decree dated 18.01.1991 was set aside and decree for recovery of Rs. 6,350/- with proportionate costs was passed.

4. In the aforementioned circumstances, the instant Regular Second Appeal has been filed before this Court.

5. I have heard learned counsel for respective parties and perused the records with their able assistance.

6. Apparently, plaintiff filed a suit for specific performance of agreement to sell dated 11.03.1979 on the plea that the said agreement to sell was executed by defendant No. 1 (Agya Ram) on behalf of defendants No. 3 and 4 (who were the original owners of suit property). Evidently, the suit filed by plaintiff was dismissed by the trial Court, however, learned first appellate Court partly allowed the appeal of plaintiff and passed a decree for recovery of Rs. 6,350/- with proportionate costs throughout in favour of plaintiff and against Agya Ram (defendant No. 1) by holding as under :-

*“11. The first material question for consideration in this appeal is whether Agya Ram, defendant no. 1 entered into an agreement with the plaintiff for sale of seven shops including the two shops which were already agreed to be sold. In order to prove the execution of this agreement plaintiff has produced Raj Kumar Bakshi P.W.1 who has categorically stated that he scribed this agreement at the dictation of Agya Ram, who put his signatures after admitting its contents as correct. This witness has categorically stated that Joginder Singh, had not signed this agreement. Savitri Devi wife of*

*Raj Kumar, appearing in the witness box as P.W.2 has also proved execution of the agreement Ex.P1. She has also stated that signatures were put by Agya Ram, in her presence. Joginder Singh, plaintiff has categorically stated about the execution of the document Ex.P1 In cross-examination he has stated that this agreement Ex. P1 does not bear his signatures. It is consistently stated by these witnesses that Ex.P1 was scribed by Raj Kumar, P.W.1 at the instance of Agya Ram, Defendant No. 1. There are no reasons to disbelieve the statements of these witnesses. Statement of Sh. N.K. Jain Exper D.W.1, to the effect that signatures of Agya Ram, defendant no. 1 do not tally with his disputed signatures on agreement Ex.P1 dated 11.3.79, does not inspire confidence and his report Ex. D.W.1/12 is meaningless when it has transpired from the evidence adduced that this expert is not acquainted with Urdu language. A perusal of the agreement Ex.P1 shows that the signatures of Agya Ram, are in Urdu. It is well settled that science of hand writing is not an exact science and the statement of the handwriting expert cannot outweigh the direct testimony of the witness because after all the statement of the expert is only an opinion evidence and the execution of the document can be proved by the person in whose presence executed by put his signatures. Authorities Piyara Singh Vs. Jagtar Singh 1986-2 P.L.R. 478, Gulab Chand Vs. Staya Vart A.I.R. 1983, Allahabad, 54, and Brij Basi Vs. Moti Ram, A.I.R. 1982 Allahabad, 323, may be looked into. Mere fact that the plaintiff has not produced any hand writing expert to rebut the statement of Sh. N.K. Jain writing expert, D.W. 1 does not matter much when the very report and statement of the expert is meaningless as discussed above. It may also be mentioned that Agya Ram appearing in the witness box as D.W. 5, is not able to rebut the testimony of Raj Kumar P.W.3. It is also pertinent to*

*mention that statement of Agya Ram, defendant No. 1 who has appeared in the witness box as D.W.5, also does not inspire confidence, because he has even denied his signatures on the written statement and so his statement to the effect that agreement Ex. P1 and Ex. P2 do not bear his signatures does not inspire confidence. No reason, is forthcoming as to why the plaintiff would get prepared these agreement Ex. P2 dt. 29.11.78, and Ex. P1 dt. 11.3.79. Mere fact that agreement Ex.P.1 does not bear the signatures of Joginder Singh vendee, the same cannot be discarded in view of the authority Gian Singh Vs. Smt. Devinder Jeet Kaur, 1987-2 (PLR) 239. This document thus can certainly be used at least as an admission of the fact recorded in it against defendant no. 1 who has executed the same.*

*12. A perusal of this agreement shows that a sum of Rs. 6350/- (six thousand three hundred fifty only) has been received by Agya Ram, at the time of execution of this agreement. Agya Ram, as D.W.5 or D.W.2 has not been able to rebut these recitals. He has not even able to state on oath that he did not receive earnest money of Rs. 6350/- mentioned in this agreement Ex.P1. Joginder Singh, has placed true cards before the court in stating that a sum of Rs. 1350/- was paid Dusti to Agya Ram at the time of execution of the agreement Ex.P2 and a sum of Rs. 4,000/- was also paid to the defendant no. 1 and in this way a sum of Rs. 6350/- was paid to him. Mere fact that Raj Kumar P.W.5 and Savitri Devi P.W.2 have stated that a sum of Rs. 4000/- paid in cash to Agya Ram, at the time of execution of the agreement Ex.P1, it cannot be held that agreement Ex.P1 is without any consideration. It seems that a sum of Rs. 1350/- was already paid to Agya Ram, and the earnest money Rs. 1,000/- paid earlier in the year 1978 at the time of execution of agreement Ex.P1 was adjusted and in this way sum of Rs. 6350/- was paid to Agya Ram defendant No. 1*



*who acknowledge the receipt of the same while executing agreement Ex.P.1. On the basis of the minor contradictions it is not desirable to hold that the agreement is without consideration. Mere fact that Savitri PW2 has stated in one breath that agreement was in respect of house while in another breath she has stated that the agreement was in respect of shops and that she has expressed her ignorance about this fact as to what was the total consideration settled for entire bargain, her statement cannot be discarded and the plaintiff cannot be non-suited. In my considered opinion, from a perusal of the recital contained in agreement Ex.P1 coupled with the statement of the plaintiff, payment of Rs. 6350/- at least is proved to Agya Ram, who has miserably failed to rebut the evidence adduced by the plaintiff regarding this payment of consideration.*

*13. It goes without saying that the agreement in question was in respect of the property belonging to Sukhdev Singh and Dalbir Singh, sons of Harbans Singh and at the time of agreement these actual owners of the property were minors. Thus Agya Ram, was not competent to enter into an agreement of sale of the property belonging to the minor without seeking permission of the court and further he was not even guardian of the minors. Thus, the agreement Ex.P2 and Ex.P1 executed by Agya Ram, are not, enforceable in the court of law. They are forbidden by laws. As envisaged by section 11 of the Hindu Minority and Guardianship Act, no person is entitled to dispose of the property of the minor without the permission of the Court. It is nowhere proved that any permission of the court as required u/s 8 of the Hindu Minority and Guardianship Act, was obtained. Thus, the agreement Ex.P1 is not enforceable and the plaintiff is not entitled to decree for specific performance of the contract. There should have been subsisting valid enforceable contract for passing the decree for specific*

*performance. At this juncture, it may be mentioned that the plaintiff also cannot take the benefit of provisions of section 13 of Specific Relief Act, 1963 or section 43 T.P. Act, because again the agreement at the very inception is void because the same is pertaining to the property of the minors and it is not proved that Agya Ram, was in any manner authorized to enter into an agreement. The plaintiff has wrongly acted upon the representation of Agya Ram. ....”*

7. Before this Court, learned senior counsel appearing for appellant has been unable to dispute the fact that at the relevant time when the agreement to sell was executed by defendant No. 1 (Agya Ram) in favour of plaintiff, defendants No. 3 and 4 were minor and defendant No. 1 (Agya Ram) had no authority to enter into an agreement for sale in respect of property of defendants No. 3 and 4 nor any such permission was granted by any Court. It is further not disputed that defendant No. 1 (Agya Ram) was not even guardian of defendants No. 3 and 4.

7.1 In terms of Section 11 of Hindu Minority and Guardianship Act, 1956 (in short '1956 Act'), no person is entitled to dispose of the property of the minor without permission of Court. Section 11 of 1956 Act reads as under :-

**“11. *De facto guardian not to deal with minor’s property.-***  
*After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the de facto guardian of the minor.”*

7.2 Concededly, since defendant No. 1 (Agya Ram) was neither guardian of defendants No. 3 and 4, nor any permission for sale of property of minors (defendants No. 3 and 4 herein) was there; therefore, in the attending circumstances, no fault can be found with the findings

returned by first appellate Court, wherein the specific performance for agreement to sell was declined.

7.3 Similarly, plaintiff cannot be extended the benefit of provisions of Section 13 of Specific Relief Act, 1963 or Section 43 of Transfer of Property Act, 1887 as from the very inception, the agreement to sell in question was a void document as regards the property of minors (defendants No. 3 and 4) is concerned because defendant No. 1 (Agya Ram) was neither authorized nor competent to enter into any agreement on behalf of defendants No. 3 and 4 (minors), in any manner whatsoever.

8. Considering the totality of circumstances, I am of the considered view that the findings of the first appellate Court are based upon appreciation of facts/pleadings as well as the evidence on record and I see no illegality or perversity in the findings returned by the lower appellate Court. Furthermore, no question of law, much less a substantial question of law, is involved herein, so as to exercise appellate jurisdiction under Section 100 of Civil Procedure Code, 1908.

9. Resultantly, the instant Regular Second Appeal is dismissed, being bereft of any merit.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)  
JUDGE

15.01.2026  
sjks

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