

2026:PHHC:072860



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

RSA-1909-2023 (O&M)
Date of Decision: 07.05.2026

Gurdeep Singh

...Appellant

VersusPritam Singh (Deceased) through LR's and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Krishan Singh, Advocate, for the appellant.

VIKRAM AGGARWAL, J (Oral)

This is plaintiff's appeal against the judgment and decree dated 06.01.2023, passed by the Court of Additional District Judge, Yamuna Nagar at Jagadhri, dismissing the appeal against the judgment and decree dated 16.01.2015 passed by the Court of Civil Judge (Junior Division), Yamuna Nagar, vide which the suit filed by the plaintiff, was dismissed.

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

3. The plaintiff filed a suit for possession by way of specific performance of the agreement to sell dated 03.06.1998 in respect of House No.1101, bearing Municipal No.B-VII-1081 (fully described in the plaint) situated near Gurudwara, Old Hamida, Yamuna Nagar (hereinafter referred to as 'the suit property'). Consequential relief of permanent injunction

restraining the defendants from alienating the suit property was also sought. It was also prayed that defendants be restrained from dispossessing the plaintiff and further not to interfere in his peaceful possession of the suit property.

3.1 It was claimed that the plaintiff and defendants No.2 and 3 were real brothers, whereas defendant No.1 was their father. Defendant No.1 was owner in possession of the suit property. It was further asserted that defendant No.3 started residing separately from defendant No.1 in 1994 and at that time, a handsome amount was given to him, whereas an amount of Rs.50,000/- had been given to defendant No.2 in 1995 to start his business. The said amount had been taken as a loan from Jagadhri Primary Co-operative Agriculture and Rural Development Bank Ltd., Jagadhri, after pledging the suit property and defendant No.1 had stood as a guarantor of the said loan.

3.2 It was further asserted that on account of the failure of defendant No.1 to repay the said loan, when the aforesaid Bank wanted to auction the suit property, defendant No.1 had entered into an agreement dated 03.06.1998 with the plaintiff to sell the suit property to him for an amount of Rs.80,000/-. A sum of Rs.5,000/- was paid as earnest money. It was agreed upon between the plaintiff and defendant No.1 that the plaintiff would repay the entire loan amount along with future interest against the suit property and the same would be adjusted in the sale consideration aforesaid. It was also agreed that after

clearing the aforesaid loan amount, the plaintiff would get the suit property transferred in his name.

3.3 It was further the case of the plaintiff that the entire loan amount was repaid by the plaintiff and besides that the arrears of electricity bill(s) were also cleared and a new electricity connection was obtained in the name of the plaintiff. It was also asserted that having performed his part of the contract, when the plaintiff called upon defendant No.1 to get the sale deed executed and registered in the name of the plaintiff, defendant No.1 in connivance with the other defendants, had issued threats to dispossess him from the suit property.

4. The defendants contested the suit by filing a joint written statement. It was averred that the entire construction of the suit property was raised by defendant No.1 out of his own funds and he was the absolute owner of the said property. It was denied that defendant No.3 had been living separately since 1994 and so was the factum of any amount having been given to him by the plaintiff. It was further averred that defendant No.1 was more than 80 years old and as such he had got the installments of the loan deposited through the plaintiff. The execution of agreement to sell was denied and it was also denied that any amount of earnest money was received by defendant No.1.

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

1. **Whether plaintiff is entitled for possession of suit land by way of specific performance of the agreement to sell dated 03.06.1988?OPP**

- 2. Whether plaintiff was/is ready and willing to perform his part of the contract?OPP**
- 3. Whether the plaintiff is entitled to the decree for permanent injunction as prayed for?OPD**
- 4. Whether the suit of the plaintiff is not maintainable in the present form?OPD**
- 5. Whether plaintiff has no locus-standi to file the present suit?OPD**
- 6. Whether the suit of the plaintiff is hopelessly time barred?OPD**
- 7. Relief.**

6. Parties led their respective evidence.

7. The trial Court, vide judgment and decree dated 16.01.2015, dismissed the suit filed by the plaintiff. The appeal against the said decision was also dismissed by the first Appellate Court vide judgment and decree dated 06.01.2023. Aggrieved by the same, the appellant-plaintiff has preferred the instant appeal.

8. I have heard learned counsel for the appellant and have also perused the record.

9. Learned counsel appearing for the appellant argues that both Courts erroneously held that the plaintiff had failed to prove the execution of the agreement to sell dated 03.06.1998, whereas the fact remains that parties to the *lis* are members of the same family and as the aforesaid agreement to sell had been executed in lieu of the loan amount having been repaid by the plaintiff, there was no occasion to prove the execution of the said agreement. It is further argued that by way of documents Ex.P-7 to Ex.P-19, it was duly proved by the plaintiff that he had

cleared the loan taken by defendant No.2 and, thus, both Courts ought not to have denied him the relief of specific performance. It is further argued that the finding recorded by both Courts that the agreement to sell (Ex.P-1) was surrounded by suspicious circumstances, is not tenable.

9.1 It is further argued that both Courts wrongly recorded that the suit filed by the plaintiff was barred by limitation. It is submitted that having been in possession of the suit property, the plaintiff had been requesting defendant No.1 to execute the sale deed in his favour and cause of action had accrued to the plaintiff on day to day basis and finally when they refused from doing so and rather issued threats to dispossess the plaintiff, the suit was filed by the plaintiff.

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

11. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of **Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157**, followed by the judgments in the cases of **Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317** and **Satender and others V/s Saroj and others, 2022(12) Scale 92**. Relying upon the law laid down in

the aforesaid judgments, no question of law is required to be framed.

12. Both Courts returned a finding that though the plaintiff had produced on record agreement to sell dated 03.06.1998 (Ex.P1), yet no attesting witness of the said agreement was examined. One Sukhvinder Singh, Advocate, who had allegedly appended his signatures on the said agreement to sell, deposed that no such agreement had been executed in his presence. Defendant No.1, who is the father of the plaintiff and defendants No.2 and 3, denied his signatures on the agreement to sell (Ex.P1). The said witness had been cross-examined at length by the counsel for the plaintiff, but nothing favourable could be extracted.

13. It was further found by both Courts that no handwriting expert or other reliable witness had been examined by the plaintiff in order to establish that the agreement to sell contained the signatures of defendant No.1. It was also found that it was not clear as to who had purchased the stamp paper for the agreement to sell nor any stamp vendor had been examined to establish the said fact. On the basis of the evidence on record, it was found that the agreement to sell was surrounded by suspicious circumstances. Apart from that, it was also found that the agreement to sell was allegedly executed on 03.06.1998, whereas the suit was filed in the year 2009 and the plaintiff was not able to explain as to why he had approached the Court in the year 2009.

14. The relevant part of the judgment of the first Appellate Court reads as under:-

“.....Therefore, it was mandatory duty upon the appellant/plaintiff to have first and foremost established by way of reliable and rational evidence, the execution of attestation of alleged agreement to sell dated 03.06.1998. Albeit, the entire available oral and documentary evidence on the case file is indeterminate and fails to give strength to the weak assertions of the appellant/plaintiff. The very perusal of the agreement to sell document Ex P1 on the record of the case indicates that it merely bears the name of attesting witnesses i.e. Karam Singh and Lal Singh, but it does not bear any signatures of any of the attesting witnesses. None of these witnesses have stepped into witness box to establish the assertions of the appellant/plaintiff with regard to any such execution of attestation of alleged agreement to sell dated 03.06.1998. Secondly, the signatures of Sukhvinder Singh, Advocate which have been allegedly appended on the agreement to sell is also clouded with serious suspicious circumstances as while appearing in the witness box as PW4, he has clearly stated in express terms that no such agreement dated 03.06.1998 was executed in his presence. Although, he has admitted his signatures Ex P1 and Ex P2, however, he has maintained that no agreement with respect to sale of any house was executed before him. Though, he was cross examined by learned counsels on this point but he has stood firm with regard to no such agreement having been executed in his presence. In such circumstances, let it be the non-examination of alleged attesting witnesses, furthermore, let it be the non availability of signatures of the alleged attesting witnesses on the alleged agreement to sell as well as the very denial of PW4 with regard to alleged agreement to sell completely clouds the version of the appellant/plaintiff with suspicious circumstances of high magnitude. The entire oral and documentary evidence, therefore, on the record of the case is uncertain, indeterminate and hazy in nature. Even the version of PW2

pertaining to repayment of loan by way of proving various such documents such as Ex P7 to Ex P19 as well as the deposition of PW3 pertaining to meter connection and relevant record i.e. Ex P20 to Ex P22 also fails to give strength to the weak and non reliable assertions of appellant/plaintiff. This court is further convinced with the submissions of learned counsel for contesting respondents/defendants that the oral and documentary evidence adduced on the record of the case by contesting respondents/ defendants is reliable and trustworthy in nature. Nothing material was extracted in the deposition of DW1 who has completely denied his signatures over the alleged agreement to sell. Although, DW1 was cross examined at length on 04.10.2014, however, he has remained firm upon his version. On similar terms, the deposition of DW2 Karam Singh is also corroborating in nature to the deposition of DW1 and both these witnesses have certainly shifted the balance of probabilities on the basis of preponderance of evidence in favour of contesting respondents/ defendants.

Withal, it is pertinent to mention that from the initial stage of filing of the written statement, respondents/defendants have maintained a uniform stand that no such alleged agreement to sell was ever executed and that it is result of fraud, forgery and misrepresentation of facts. The defendant no.1 has denied his signatures on the alleged agreement to sell and hence, it was always open for the appellant/plaintiff to have examined some handwriting expert or other reliable witness in order to establish the assertions of the appellant/plaintiff with regard to signatures of Pritam Singh over the alleged agreement to sell. However, no such handwriting expert or other reliable evidence has been established and adduced on the record in order to give strength to such assertions. Moreover, whereas the alleged agreement to sell has been stated to be of 03.06.1998, however, the deposition of PW1 is uncertain as to who purchased the stamp for the said alleged agreement to sell. In the initial part of cross examination, PW1 has stated that he himself purchased

the stamp whereas in the other part of his cross examination, he has deposed that it was Pritam Singh who purchased the stamp and hence in these circumstances, the non examination of stamp vendor further casts shadow of cloud over the version of the appellant/plaintiff. The entire circumstances as well as gamut of admissible evidence on the record of the case casts doubt on the authenticity of the agreement. Moreover, non examination of attesting witnesses as well as non examining of scribe further leads to an adverse inference against the appellant/plaintiff. The relevant register of stamp vendor pertaining to purchase of stamps wherein corresponding entries would have been made and attested by purchaser has also not been proved on record. In such circumstances, the case put forth by the appellant/plaintiff stand on weak footings. Reliance in this regard is placed upon Richhpal Singh vs. Sandhura Singh, 2013(3) CCC 242 (P&H), Mangat Singh vs. Rakesh Kumar Gupta and another 2014 (4) RCR (Civil) 387. This court is therefore, convinced with the submissions of learned counsel for respondents/defendants that mere evidence in the form of possession of original receipts of payment of loan installments, possession of electricity connection, etc is not sufficient to dispel and dislodge the suspicious circumstances as enumerated hereinabove. Once the appellant/plaintiff has failed to establish the due execution and attestation of alleged agreement to sell in his favour, there remains no further question with regard to his readiness and willingness to perform his part of contract.”

15. This Court is of the considered opinion that both Courts rightly dismissed the suit filed by the plaintiff. In a suit for specific performance of an agreement to sell, the plaintiff is required to prove the due execution of such agreement by examining the attesting witnesses and the factum of the sale consideration including the element of any earnest money

having been paid. In the instant case, the plaintiff having remained unsuccessful in discharging the burden of proof, the findings recorded by Courts below cannot be said to be suffering from any patent illegality warranting interference by this Court in the instant Regular Second Appeal. It could not be pointed out that any evidence has been misread or not taken into consideration.

16. For the reasons aforementioned, I do not find any merit in the present appeal and the same is, accordingly, dismissed.

17. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

07.05.2026
ds

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