



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(203)

RSA No. 2627 of 1996 (O&M)

Reserved on : 23.04.2026

Pronounced on : 28.04.2026

Uploaded on : 28.04.2026

Balwinder Singh

...Appellant

Versus

Gurmukh Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL

Present: Mr. Karanjit, Advocate for the appellant.

Mr. Nand Lal Sammi, Advocate for the respondent.

Amarinder Singh Grewal, J. (Oral)

1. The defendant is the appellant before this Court challenging the judgment and decree dated 22.08.1996 passed by the learned First Appellate Court, by which the appeal preferred by the plaintiff-respondent has been allowed and the judgment and decree of the learned trial Court dated 11.06.1994 has been set-aside.

2. For the sake of convenience, the parties shall be referred to in terms of their status before the trial court.

3. Briefly stated, the facts of the case are that the plaintiff-Gurmukh Singh son of Sh. Gursaran Singh filed the suit for possession by way of specific performance of the agreement to sell dated 14.09.1989 before the learned trial Court in which, it was submitted that defendant-Balwinder Singh son of Sh. Piara Singh, approached the plaintiff and represented that he is the owner in possession of the suit property having been purchased by him vide sale deed dated 23.07.1980 and that the property



was free from all encumbrances. The defendant agreed to sell the said property along with all rights appurtenant thereto including the plot underneath and structure raised over it along with securities of water and electricity, hand pump and flush in running condition for a consideration of Rs. 98,000/- to the plaintiff and received Rs. 10,000/- as an earnest money out of the total sale consideration of Rs. 98,000/- and agreed that the balance consideration amount shall be taken at the time of execution and registration of the sale deed. It is further averred that in the agreement to sell that, in case, the plaintiff did not get the sale deed executed and registered by 14.03.1990, his advance shall be deemed to be forfeited and if the defendant fails to perform his part of the agreement then the plaintiff shall be entitled to get the sale deed executed and registered through the Court of law. The said bargain was struck through Kartar Singh, broker who witnessed the agreement to sell as an attesting witness besides other attesting witnesses. The defendant signed as well as thumb marked the said agreement. It is averred that as the defendant did not execute and register the sale deed of the property in favour of the plaintiff, the plaintiff served a notice on the defendant on 07.03.1990 through his counsel Sh. Narinderjit Singh, Advocate. On 14.03.1990, the plaintiff appeared in the office of Sub Registrar, Amritsar along with the balance sale consideration but the defendant failed to turn up for the performance of his part of the agreement. It is further averred that the plaintiff always remained ready and willing to perform his part of the contract but the defendant failed to perform his part of the agreement. Thus, on the basis of this fact, the suit was filed before the learned trial Court.



4. Upon notice, the defendant appeared and filed his written statement contesting the suit, raising various preliminary objections. On merits, it has been averred that the defendant never approached the plaintiff to sell his property. The defendant denied the averments that he ever entered into any agreement with the plaintiff or received Rs. 10,000/- as earnest money. It is averred that Kartar Singh managed to get the signatures of defendant on some blank paper as he failed to refund his Rs. 6,000/- and the plaintiff being the associate of Kartar Singh might have managed to prepare the alleged agreement, which is the result of fraud and mis-representation. No such agreement to sell the house in dispute was ever entered into between him and the plaintiff and his suit is liable to be dismissed.

5. The plaintiff filed a replication denying the contents of the written statement and reiterating the averments made in the plaint.

6. On the basis of the pleadings of the parties, the following issues were framed:

1. Whether the defendant executed an agreement to sell dated 14.09.1989 in favour of the plaintiff and received Rs. 10,000/- as earnest money from him? OPP.
2. Whether the aforesaid agreement is a result of fraud and mis-representation? OPD.
3. Whether the plaintiff is entitled to the possession of the suit property by way of specific performance of the agreement to sell.? OPD.
4. Relief.

7. The parties led evidence in support of their respective pleadings.

After hearing learned counsel for the parties and on appreciation of the



evidence on record, the learned Sub Judge Ist Class, Amritsar dismissed the suit of the plaintiff vide judgment and decree dated 11.06.1994 by giving issue-wise findings. Aggrieved against the said judgment, the plaintiff preferred an appeal before the learned Additional District Judge, Amritsar, who, vide judgment and decree dated 22.08.1996, allowed the appeal and set-aside the judgment and decree of the learned trial Court dated 11.06.1994.

8. Still feeling dissatisfied, the defendant has knocked the door of this Court by way of filing a regular second appeal praying that the same be accepted, the impugned judgment and decree dated 22.08.1996 passed by the Court below be set aside and the suit of the plaintiff be dismissed.

9. Learned counsel for the appellant contended that the judgment and decree dated 22.08.1996 passed by the learned First Appellate Court is against law, facts and is based upon conjectures and surmises as learned First Appellate Court had wrongly reversed the well reasoned judgment of the learned trial Court dated 11.06.1994. Learned counsel for the appellant further contended that before the learned trial Court, no document was exhibited for the purpose of showing his attendance in the office of the Sub Registrar on 14.03.1990, rather, an application was moved by the plaintiff before the learned First Appellate Court and the same was allowed to be exhibited by the said Court. Learned counsel further contended that the learned First Appellate Court wrongly and illegally allowed the plaintiff to fill up a lacuna in his evidence, when it allowed the plaintiff to place on record the copy of notice dated 07.03.1990 regarding his attendance before the Sub Registrar on 14.03.1990. It was further contended that in fact, the



plaintiff had no money to pay the balance sale consideration on 14.03.1990. It was further contended that at the time of cross-examination of plaintiff-Gurmukh Singh, he had deposed that he had collected Rs. 10,000/-, which he paid to the defendant after selling the gold. At the same time, he had deposed that he was to pay the balance consideration amount after selling his portion of his ancestral house, which house has not yet been partitioned as per the deposition made by him. Rather, plaintiff had gone to the extent by submitting before the learned Court below that he has neither any amount nor any bank balance. Further, the plaintiff had admitted in his cross-examination that he is a labourer at the shop whose owner is his father and the gold which is lying at the shop is of the customers.

10. Further, it was contended that once, the plaintiff had admitted the above facts that he was not in possession of any money for paying the balance sale consideration amount as such, the learned Additional District Judge should not have reversed the finding so recorded by the learned trial Court. Thus, it is submitted that the learned First Appellate Court had wrongly appreciated the evidence and had wrongly allowed the appeal filed by the respondent-plaintiff. Therefore, in the interest of justice, it is prayed that the present appeal be allowed, the impugned judgment and decree dated 22.08.1996 passed by the learned First Appellate Court be set aside, and the suit of the respondent/plaintiff be dismissed.

11. To the contrary, learned counsel for the respondent had contended that respondent had proved the agreement to sell dated 14.09.1989 by examining himself as PW1 and by examining PW2-Kartar Singh, who was broker of the deal. It was further contended that learned trial Court had



framed as many as four issues. It was further contended that Issue No. 1 that whether the defendant executed an agreement to sell dated 14.09.1989 in favour of the plaintiff and received Rs. 10,000/- as earnest money, the onus was upon the plaintiff-Gurmukh Singh and the said issue was decided in favour of the plaintiff-Gurmukh Singh and even Issue No. 2 that whether the aforesaid agreement is a result of fraud and mis-representation, was also decided in favour of the plaintiff-Gurmukh Singh. It was further contended that though, Issue No. 3 that whether plaintiff is entitled to the possession of the suit property by way of specific performance of the agreement to sell was decided against the plaintiff on the ground that the plaintiff failed to prove that he was ready and willing to perform his part of contract and that he was in possession of the balance sale consideration and that he never appeared before the Sub Registrar on 14.03.1990 but in the appeal, notice dated 07.03.1990 and that of attendance certificate dated 14.03.1990 which shows that respondent-plaintiff appeared before the Sub Registrar was got proved before the learned First Appellate Court and as such the learned First Appellate Court rightly accepted the appeal and set-aside the judgment and decree of the learned trial Court. Rather by adducing the certificate dated 14.03.1990, it amply shows that the respondent-plaintiff was ready and willing to perform his part of contract, whereas, the appellant-defendant never appeared before the Sub Registrar on the said date i.e. 14.03.1990 to perform his part of the contract. Thus, it is submitted that the findings recorded by the learned First Appellate Court are well reasoned one and do not warrant any interference as such and the appeal be dismissed.

12. I have heard learned counsel for the parties at length and have



carefully perused the judgments and decrees passed by both the Courts below along with the evidence available on record.

13. On hearing the aforesaid submissions of the respective counsel for the parties and as discussed above, the respondent-plaintiff had filed the case before the learned trial Court on the basis of the agreement to sell dated 14.09.1989. This Court feels that both the Courts below had rightly held that the appellant-defendant had simply denied the execution of the agreement to sell dated 14.09.1989. Further, the appellant-defendant taken the plea that the agreement to sell dated 14.09.1989 was result of fraud and misrepresentation but no evidence was led to this effect by the learned counsel for the appellant-defendant before the learned trial Court.

14. Further, even though much hue and cry was raised before this Court by the learned counsel for the appellant-defendant that respondent-plaintiff never had the balance sale consideration amount on the date of the execution and registration of the sale deed i.e. dated 14.03.1990 and he never appeared before the Sub Registrar Office, Amritsar and as such, he was never ready and willing to perform his part of contract, but this Court is of the view that in the case in hand, the respondent-plaintiff had moved an application for leading additional evidence before the learned First Appellate Court and the same was allowed and then the respondent-plaintiff produced the notice dated 07.03.1990 and also the attendance certificate before the Sub Registrar, Amritsar dated 14.03.1990. Further, in case the respondent-plaintiff was not having sufficient money to perform his part of the contract, this Court feels that the appellant-defendant should have replied to the notice dated 07.03.1990 Ex. PX served upon him but strangely, the appellant-



defendant never replied to the same.

15. Further, this Court is of the view that in case, the respondent-plaintiff was not having the balance sale consideration amount on the date of the execution and registration of the sale deed on 14.03.1990, in that eventuality, the appellant-defendant should have appeared on the said date before the Sub Registrar, Amritsar and could have submitted that respondent-plaintiff was not having balance sale consideration amount but appellant-defendant never appeared before the Sub Registrar. When the respondent-plaintiff had appeared before the Sub Registrar on 14.03.1990 and had proved the attendance certificate before the learned First Appellate Court, it shows that the respondent-plaintiff was ready and willing to perform his part of the contract.

16. Further, as argued by the learned counsel for the appellant-defendant that respondent-plaintiff could not produce any document that he sold his share in the residential house, and as such, he had no money with him on the date of execution and registration of the sale deed, the same is not sustainable because this Court again repeats that the above plea should have been taken by the appellant-defendant in case, he had appeared before the Sub Registrar, Amritsar on 14.03.1990. Rather, this Court feels that the balance sale consideration was not such a huge amount to have got arranged by the respondent-plaintiff for execution of the sale deed in his favour. Rather, the respondent-plaintiff had duly proved the legal notice dated 07.03.1990 Ex. PX and attendance certificate before the Sub Registrar as Ex. PY/1 and by proving the same before the learned First Appellate Court, it clearly shows that respondent-plaintiff was always ready and willing to



perform his part of the contract, whereas it was the appellant-defendant, who had no intention to perform his part of the contract, otherwise, appellant-defendant could have appeared before the Sub Registrar on 14.03.1990.

17. I find that the verdict given by the learned First Appellate Court is based upon proper appreciation and correct interpretation of law. The learned First Appellate Court had accepted the claim of the respondent-plaintiff. I do not see any reason to disagree with the view of learned First Appellate Court and take a different view and further to interfere with the impugned judgment and decree dated 22.08.1996. Hence, the judgment and decree dated 22.08.1996 passed by the learned First Appellate Court is upheld.

18. In view of the judgments passed by the *Hon'ble Supreme Court in Pankajakshi (Dead) through Legal Representatives and others vs. Chandrika and others (2016) 6 SCC 157, Randhir Kaur v. Prithvi Pal Singh and others (2019) 17 SCC 71 and Gurbachan Singh (dead) through LRs v. Gurcharan Singh (dead) through LRs and others*, questions of law are not required to be framed in second appeal before the Punjab and Haryana High Court whose jurisdiction is circumscribed by provisions of Section 41 of the Punjab Courts Act, 1918.

19. The appeal stands dismissed accordingly.

20. Since the main appeal stands dismissed, the miscellaneous application(s), if any, stand disposed of accordingly.

April 28, 2026
kanchan

(AMARINDER SINGH GREWAL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No