

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****108****RSA-1835-2019 (O&M)****Date of decision: 27.01.2026****Hardev Singh alias Gurdev Singh (deceased)
through his LRs and another****...Appellant(s)****Vs.****Naresh Kumar and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Sarbjit Singh Khaira, Advocate
for the appellant.Mr. D.S.Bainola, Advocate for
respondent No.4.Ms. Gagandeep Kaur, Advocate
for respondent No.5.

NIDHI GUPTA, J.

Defendants No.1 and 2 are in Second Appeal against the concurrent judgments and decrees of the learned Courts below; whereby suit filed by the plaintiff/respondent No.1 for possession by way of specific performance of Agreement to Sell dated 04.04.2002, has been decreed by both the Courts below for specific performance.

2. The facts as pleaded by the plaintiff in the plaint are that the suit land measuring 12K-6M was previously in the ownership of one Kartar Singh, predecessor-in-interest of the appellants herein, who had executed an Agreement to Sell dated 04.04.2002 in favour of the plaintiff for total sale of Rs.4,50,000/-. Kartar Singh had died and his estate was mutated in



favour of defendants No.1 to 3. Avtar Singh /defendant No.3-son of late Kartar Singh, had received an amount of Rs.3,20,000/- as earnest money. The date of execution of Sale Deed was set for on or before 03.04.2003. It was pleaded in the plaint that plaintiff had duly remained present before the Sub Registrar Mukerian on 03.04.2003. However, none had appeared on behalf of the defendants. Plaintiff had served a legal notice dated 10.10.2003 for execution of Sale Deed but defendants did not do the needful. As such, present suit was filed on 15.01.2004.

3. Upon appraisal of the pleadings and the evidence led by the parties, the learned Additional Civil Judge (Senior Division), Mukerian had decreed the suit of the plaintiffs vide judgment and decree dated 04.11.2011, in the following terms: -

“20. In view of my findings on various issues, suit of plaintiff is decreed with costs to the effect that he is entitled to possession by way of specific performance by execution of sale deed on deposit of balance sale consideration of Rs. 1,30,000/- within one month of the passing of decree.

Further defendant no. 1 is directed to get sale deed executed in favour of plaintiff within two months on deposit of balance sale consideration, failing which the plaintiff would have liberty to get sale deed executed through process of court. Further, it is also made clear that defendant no. 6 bank with whom suit property has been mortgaged, would have first charge over the balance sale consideration/suit property for recovery of loan amount. Decree sheet be drawn accordingly and file be consigned to record room.”



4. Against the above, the Defendants No.1 and 2 had preferred Civil Appeal, which was dismissed by the learned Additional District Judge, Hoshiarpur vide judgment and decree dated 17.12.2008. Hence, the present second appeal by defendants No.1 and 2.

5. It is *inter alia* submitted by learned counsel for the appellants/defendants No.1 and 2 that the learned Courts below were in error in decreeing the suit of the plaintiff as they failed to appreciate that in actual fact, plaintiff was a money lender. Father of the defendants was in dire need of money and he approached the plaintiff and requested him to give Rs.50,000/- at which time plaintiff had taken signatures of Kartar Singh and his family members on stamp papers, which were subsequently misused by him to forge the present fraudulent Agreement to Sell. It is submitted that in actual fact, the appellants had also returned an amount of Rs.40,000/- out of the borrowed sum of Rs.50,000/- to the plaintiff in the presence of witness, namely Darshan Singh. It is contended that the plaintiff in his cross-examination has admitted that he was money lender as plaintiff has stated that he has 4-5 cases of the same nature against him in different villages. Even the Deed Writer has admitted in his cross-examination that he does not know any of the parties personally. It is submitted that therefore, the said Agreement to Sell was not enforceable in the eyes of law being without consideration, forged, fabricated and sham document as conduct of the plaintiff is doubtful.

6. Learned counsel for respondent No.5/defendant No.3 submits that she supports submissions advanced on behalf of the



appellants. It is also pointed out that respondents No.2 and 3 were proceeded ex parte before the learned first Appellate Court.

7. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of the Courts below be set aside.

8. No other argument is raised on behalf of the parties. I have heard learned learned counsel for the parties and perused the case file in great detail. I find no merit in the submissions advanced on behalf of the appellants and respondent No.5.

9. Learned Courts below have returned concurrent findings of fact that the plaintiff had duly proved execution of the Agreement to Sell dated 04.04.2002 Ex.P1 by examining the attesting witness PW1 Gulzar Singh. Plaintiff had also examined PW2 Parveen Kumar, Deed Writer of the said Agreement. Deed Writer has specifically stated that the Agreement was scribed by Kartar Singh in favour of the plaintiff for suit land measuring 12K-6M for total amount of Rs.4,50,000/- and date for execution of Sale Deed was fixed for 03.04.2003. Besides that, plaintiff had himself appeared as PW3. All the above witnesses have deposed regarding the execution of the Agreement to Sell dated 04.04.2002 Ex.P1. The said witnesses have also proved that amount of Rs.3,20,000/- was paid as earnest money to defendant No.3 by the plaintiff. Despite lengthy cross-examination, the testimony of these witnesses could not be shaken.

10. Moreover, defendants No.1 to 3 have not denied thumb impression of Kartar Singh on the Agreement to Sell. Rather, it was stated



that thumb impression of Kartar Singh was taken by the plaintiff on blank papers which was later misused. However, the said contention of the defendants is liable to be rejected in view of two facts. Firstly, the Agreement to Sell also bears the signatures of Avtar Singh/son of Kartar Singh and Harbans Kaur/wife of Kartar Singh as witnesses to the Agreement; along with attesting witnesses Gulzar Singh and Prakash Singh. Further, it is undisputed fact on record that even the Register of the Deed Writer/ Ex.P-9, bears the thumb impression of Kartar Singh. Even assuming for the sake of argument that thumb impression of Kartar Singh was taken by the plaintiff on blank paper, the defendants are unable to explain as to how the Register of the Deed Writer bears the signature of Kartar Singh. Appellants have been unable to explain as if Kartar Singh had only appended his signature against loan amount, then how his signature had appeared on the Register Ex.P9 of Deed Writer Parveen Kumar PW2. It is also to be noted that even no steps were taken by the defendants to prove that the said thumb impressions are not of Kartar Singh. No handwriting expert was examined by the defendants. Rather, Defendant No.3/Avtar Singh as DW1 had admitted his signatures on the Agreement to Sell Ex.P1 and has also admitted thumb impressions of his parents on the said Agreement. Admittedly defendant No.3 was a literate person and had signed on the Agreement to Sell in roman script. Moreover, Avtar Singh as DW1 has admitted in his cross-examination that he had never reported that the plaintiff had obtained signatures on blank papers. On the contrary, he had admitted his signatures and thumb



impressions of his parents on Ex.P1. Thus, the Agreement in question stood proved in accordance with law.

11. Evidence of DW8 Kewal Singh and DW9 Darshan Singh is of no help to the appellant as the said witnesses had both stated that they were told to give evidence in this case at the instance of Avtar Singh.

12. Further, the readiness and willingness of the plaintiff to perform the contract was proved from the presence of the plaintiff in the office of Sub Registrar vide Affidavit dated 03.04.2003 Ex.P2. Readiness and willingness of the plaintiff was also proved from the legal notice dated 10.10.2003 Ex.P5 served by the plaintiff upon defendants No.1 to 3. The plaintiff had further fixed the date for execution of Sale Deed as 10.10.2003 in the legal notice served by him upon defendants No.1 to 3. As 10.10.2003, 11.10.2003 and 12.10.2003 were holidays, plaintiff had also proved his presence in the office of Sub Registrar, Mukerian on 13.10.2003. Of the total sale consideration of Rs.4,50,000/-, plaintiff has undisputedly paid Rs.3,20,000/- i.e. more than 71% of Rs.4,50,000/-. Thus, readiness willingness of the plaintiff also stands established.

13. Argument of the appellants that plaintiff in his cross-examination had admitted that he has 4-5 similar cases pending against him, is of no help to the appellants as the said deposition cannot be read piecemeal to the exclusion of the above evidence. Moreover, Plaintiff has categorically denied in his cross-examination that does not lend money; and defendants have not led any evidence to prove their said contention.

14. Learned counsel for the appellants and respondent No.5 is unable to controvert or dispute the above said facts and findings.

15. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon’ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants.

16. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. The present Regular Second Appeal is hereby **dismissed**.

17. Pending applications, if any, stand disposed of.

27.01.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE