

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

(204)

RSA-1852-1999 (O&M)
Date of Decision: **07.04.2026**

RAJESH KHATANA

... Appellant

Versus

RAJESH AND OTHERS

... Respondents

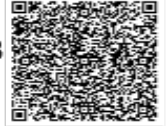
CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present:- Ms. Ritu Punj, Advocate with
Ms. Sonia Panna, Advocate
for the appellant.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal (hereinafter referred to as “RSA”) is directed against the judgment and decree dated 08.04.1999 passed by the learned Additional District Judge, Gurugram, whereby the appeal preferred by the defendant–respondent was allowed and the judgment and decree dated 31.05.1995 passed by the learned Senior Sub Judge, Gurugram was set aside.

2. Briefly stated, the plaintiff instituted a suit for specific performance of an agreement to sell dated 05.10.1988, allegedly executed by defendant No.1 in favour of the plaintiff in respect of the suit land for a total sale consideration of ₹2,00,000/-. It was pleaded that an amount of ₹20,000/- was paid as earnest money at the time of execution of the said agreement, and the sale deed was agreed to be executed and registered on 10.03.1989.

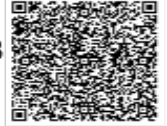


2.1 It was further averred that defendant No.1, with mala fide intent, subsequently executed a lease deed for a period of 60 years in respect of a major portion of the suit land in favour of defendant No.2 and also executed a sale deed in favour of defendant No.3 on 21.10.1988. The aforesaid transactions were challenged as fictitious, sham, and collusive, allegedly executed with the sole object of defeating the lawful rights of the plaintiff. On these averments, the suit was instituted.

3. Upon issuance of notice, defendant No.1 contested the suit by filing a written statement, denying the execution of the alleged agreement to sell as well as the receipt of any earnest money. It was specifically pleaded that the alleged agreement, if any, was false, forged, and fabricated. However, execution of the lease deed and sale deed in favour of defendants No.2 and 3 was admitted.

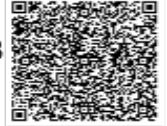
3.1 Defendants No.2 and 3 also contested the suit. Defendant No.3 claimed to be a *bona fide* purchaser for valuable consideration without notice of any alleged agreement in favour of the plaintiff. During the pendency of the suit, certain further transfers of the suit land took place, whereupon defendants No.4 to 6 were impleaded as parties being transferees pendente lite. The said defendants also filed written statements asserting themselves to be *bona fide* purchasers for consideration.

4. The plaintiff filed a replication, wherein the averments and objections raised in the written statements were categorically denied, while the pleadings set forth in the plaint were reaffirmed and reiterated. Upon a careful and comprehensive scrutiny of the pleadings on record, as well as



the rival contentions advanced by the parties, the learned Trial Court deemed it appropriate to crystallize the issues in controversy and, for the purpose of a systematic and legally coherent adjudication, proceeded to frame the following issues for determination:—

1. Whether defendant No.1 had agreed to make sale of her land with the plaintiff vide agreement dated 5.10.88 as alleged? OPP
 2. Whether the plaintiff has always been ready and willing to perform his part of contract? OPP
 3. Whether the suit is not maintainable? OPD
 4. Whether the plaintiff has not come court with clean hands. If so, to the effect thereof? OPD
 5. Whether the plaintiff has got no cause of action to bring the suit? OPD
 6. Whether the plaintiff is estopped from bringing the suit by his act and conduct as alleged? OPD
 7. Whether the plaintiff has no locus standi bring the suit? OPD
 8. Whether defendant No.3 is bonafide purchaser of the suit land for valuable consideration? OPD
 9. Whether defendant Nos. 4 to 6 are bonafide purchasers of the land for valuable consideration as alleged by them? OPD
 10. Whether the suit is bad for non-joinder of parties? OPD
 11. Whether defendants No.4 to 6 have incurred account expenses of Rs. 2,71,000/- on improvement of suit land? OPD
 12. Relief.
5. Both parties were afforded full opportunity to adduce evidence pursuant to the framing of issues. After hearing learned counsel for the



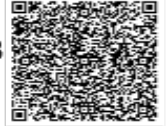
parties, the learned Senior Sub Judge, Gurugram decreed the suit of the plaintiff for specific performance of the agreement to sell (Ex.P1).

5.1 Aggrieved by the judgment and decree so passed, the subsequent purchasers, namely defendant Nos.4 to 6, preferred an appeal. The learned First Appellate Court allowed the said appeal, reversed the findings recorded on Issues No.1 and 3 to 7, and consequently set aside the judgment and decree passed by the learned Trial Court. Being dissatisfied with the judgment and decree passed in appeal, the present Regular Second Appeal has been preferred.

5.2 The appeal was admitted for hearing on 11.12.2000. Notice was duly served upon the respondents; however, they failed to appear despite service. The record of the learned Courts below was requisitioned and is available on record for adjudication.

6. I have heard learned counsel for the appellant at considerable length and have bestowed anxious and thoughtful consideration upon the submissions advanced, in the light of the pleadings of the parties, the evidentiary material brought on record, and the findings returned by the Courts below.

7. Learned counsel for the appellant–plaintiff contended that the learned Additional District Judge, Gurugram, has misinterpreted and misconstrued both the pleadings and the evidence on record. It is submitted that the Court below has erred in holding that the execution of the agreement to sell Ex.P1 has not been proved against defendant No.1. It is further contended that defendant No.1 did not enter the witness box to



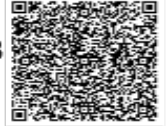
rebut the evidence led by the plaintiff, and therefore an adverse inference ought to have been drawn against her.

7.1 It is further urged that the plea taken by respondent No.1 in the written statement that she was unable to walk on the alleged date of execution of the agreement on account of pregnancy stands falsified from the admitted fact that she executed a lease deed and a sale deed in favour of respondents No.2 and 3 merely about 15 days thereafter.

7.2 It is further submitted that the learned First Appellate Court has wrongly discarded the testimony of the handwriting expert, who, according to the appellant, had duly proved that the thumb impressions on agreement Ex.P1 belong to respondent No.1. It is thus contended that the impugned judgment is based on erroneous appreciation of evidence and on untenable grounds, warranting interference in appeal.

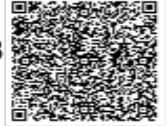
8. The learned First Appellate Court has recorded its findings in paragraphs 15 and 16 of the impugned judgment, which read as under:—

15. I have considered the rival arguments of Ld. Counsel for both the parties and have also perused the relevant record. The main reliance of the plaintiff is on document, Ex.P1. The material controversy is at page 3 of this document, which is at page 113 of the lower Court's file. Perusal of the same shows that this document was executed under suspicious circumstances. If this document would have been executed at one time and signed at one time, then the name of sh. Rajinder narain, Advocate, who is stated have drafted this document, would have been written with the same typewriter, the wording 'Rs. 20,000/-which is said to be earnest money of sale consideration' would have been



incorporated with the same typewriter; and the names of the witnesses also would have been typed with the same typewriter. The ink used by Sh. Rajinder narain, advocate, is different ink and the ink used for writing the names of the witnesses is different. It is a well settled law that the marginal witnesses of the document should appear and prove the execution of the document. None of marginal witnesses to this document has been produced by the plaintiff to prove the execution of this document. Even the scribe of this document has also not stepped into the witness box. the view of the Hon'ble Supreme Court is that the evidence of the expert witness is weak type of evidence. Even the appearance of the writer is very material and even if the entire document is held formally proved, that does not amount to be proof of truth of the contents of the document. the only person competent to give evidence on the truthfulness of the contents of the document Is writer thereof. In the case in hand, since writer has also not been produced by the plaintiff, so the evidence of the expert witness cannot be safely relied upon without independent corroboration. In this case, there is no Independent corroboration to the testimony of expert witness except the bald statement of plaintiff himself, who is an Interested witness.

16. Moreover, this principle of law also cannot be Ignored that the plaintiff must succeed fail at his own case and cannot take advantage of weakness in defendant's case to get a decree. case. In my view, in the case in hand, the learned trial court has passed the decree after taking into consideration the weakness of the defendant. So, in the Ex.P1, light of above, the due execution of document agreement to sell, is not proved as per law and,



therefore, the findings recorded by learned trial Court on Issue No.1 are hereby set aside.

9. It is pertinent to note that, in order to prove the execution of the agreement to sell (Ex.P1), the appellant–plaintiff has failed to examine any of the marginal witnesses to the said document. Likewise, the scribe of the agreement has also not been examined to establish that the agreement to sell was, in fact, executed by defendant No.1 in favour of the appellant–plaintiff.

9.1 Apart from the statement of the appellant–plaintiff himself, only a handwriting expert has been examined on his behalf. The learned First Appellate Court has, in this regard, rightly observed that the report of a handwriting expert is merely opinion evidence, which is inherently a weak type of evidence and, therefore, requires independent corroboration.

9.2 It is significant that, for reasons best known to the appellant–plaintiff, the best available evidence in the form of marginal witnesses and the scribe of the agreement Ex.P1 has been withheld. The expert report, at best, may indicate the thumb impressions of defendant No.1 on the agreement to sell Ex.P1; however, the same, by itself, does not constitute proof of due execution of the agreement.

9.3 The learned First Appellate Court has thus rightly concluded that the appellant–plaintiff is required to establish his case by leading cogent, reliable, and convincing evidence and cannot derive advantage from the alleged weaknesses in the case of the respondent–defendant. In view of the above discussion, there is no illegality or infirmity in the



impugned judgment, which is found to be well-reasoned and sustainable in law. The appeal, being devoid of merit, is accordingly **dismissed**.

10. In view of the fact that the principal matter stands finally adjudicated, all pending miscellaneous applications, if any, also stand disposed of accordingly. No further orders are required to be passed in that regard.

07.04.2026
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No