



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(246)

RSA No. 3797 of 1998 (O&M)

Reserved on : 25.02.2026

Pronounced on : 09.03.2026

Uploaded on : 10.03.2026

Rehmatulla and others

...Appellants

Versus

Smt. Wahida and others

...Respondents

***CORAM: HON'BLE MR. JUSTICE AMARINDER SINGH GREWAL***

Present: Mr. Sudhir Aggarwal, Advocate with  
Mr. Ishan Aggarwal, Advocate  
for the appellants.

Mr. Sukhandeep Singh, Advocate with  
Mr. Brijesh Kumar Jangra, Advocate and  
Mr. Ram Lal Yadav, Advocate  
for respondents No. 1 to 3.

Service of respondent No. 4 was dispensed with  
vide order dated 13.03.2024.

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**Amarinder Singh Grewal, J.**

1. The present Regular Second Appeal has been filed by the legal heirs of the plaintiff-Ishak challenging the judgment and decree dated 29.08.1998 passed by the learned Additional District Judge, Gurgaon, whereby the judgment and decree dated 15.12.1993 passed by the learned Additional Senior Sub Judge, Ferozepur Jhirka was set aside and the suit of the plaintiffs for possession by way of Specific Performance of Contract, was dismissed.



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 Ishak (since deceased) through his legal representatives Rehmattulla and Khussi, filed Civil Suit No. 718 dated 22.05.1989 for possession by way of specific performance of an agreement to sell dated 14.12.1984 against respondents-defendants Noor Mohd. and others. It was pleaded that defendant No. 1- Noor Mohd. son of Goonga being owner of the agricultural land as detailed in para 1 of the plaint, entered into an agreement to sell dated 14.12.1984 in favour of the plaintiff for a total sale consideration of ₹30,000/-. At the time of execution of the agreement, an amount of ₹5,000/- was paid to defendant No. 1-Noor Mohd. as earnest money and a receipt was also executed. The balance consideration of ₹25,000/- was to be paid at the time of execution and registration of the sale deed on or before 30.12.1985.

3.1 It was further pleaded that the suit land was mortgaged vide deed for an amount of ₹14,000/- in favour of the husbands of defendants No. 2 to 4 and one Deen Mohd., the real brother of husband of defendant No. 2. Subsequently, at the request of defendant No. 1, the plaintiff paid an additional amount of ₹15,000/- on 27.05.1985 out of the balance sale consideration, which was endorsed on the agreement and a separate receipt was also executed. Possession of the suit land was also allegedly delivered to the plaintiff in presence of the husband of defendant No. 2. The remaining amount of ₹10,000/- was to be paid to the plaintiff at the time of execution and registration of the sale deed on or before 30.12.1985.



3.2 According to the plaintiff, he later came to know that Samma, husband of defendant No. 2-Smt. Waheeda, falsely claiming to be the General Power of Attorney holder of defendant No. 1, executed a sale deed on 27.05.1985 in favour of defendants No. 2 to 4. It was asserted that Samma was not the lawful attorney of defendant No. 1 and that the sale deed dated 27.05.1985 executed in favour of defendants No. 2 to 4 was illegal, bogus and document of no value. The plaintiff further pleaded that he remained ready and willing to perform his part of the contract and even appeared before Sub Registrar, Punhana on 30.12.1985 with the balance sale consideration and expenses for registration and waited in the Tehsil Premises from 9.00 a.m. to 5.00 p.m. but defendant No. 1-Noor Mohd. failed to appear. A legal notice dated 21.02.1986 was also issued to the defendants, but the same was refused. Thus, on the basis of these facts, plaintiff-Ishak (since deceased) through his legal representatives had filed the suit for Specific Performance of the agreement to sell dated 14.12.1984.

4. It may be noticed that plaintiff-Ishak died during the pendency of the suit, his legal representatives Rehmatulla and others were impleaded by the learned trial Court.

5. Upon notice of the suit, defendant No. 1-Noor Mohd. appeared and filed written statement admitting the averments made in the plaint to be correct. It was pleaded that it was in the knowledge of Samma and husband of defendant No. 2, who is close relation of defendants No. 3 and 4 and that defendant No. 1 had entered into an agreement of sale with the plaintiff and thereafter, defendant No. 1 received a sum of ₹20,000/- out of the sale consideration from the plaintiff. It was further pleaded that defendant No. 1-



Noor Mohd. never appointed Samma as his Power of Attorney holder. It was pleaded that if any such power of attorney existed, the same must have been obtained by fraud. Even the alleged power of attorney in favour of Samma was never acted upon nor defendant No. 1 ever gave any authority to Samma to execute the sale deed in favour of his wife and other relations. The agreement of sale dated 14.12.1984 was executed in favour of the plaintiff with full knowledge of Samma. Defendant No. 1 had also executed a sale deed with respect to some other piece of land in Village Jatrana about 3-4 years ago and also in January, 1985.

5.1 It was further pleaded that defendant No. 1 was always ready to perform his part of contract but due to the fact that other defendants in the written statement before Civil Court in another suit stated that the land in question has been sold by Samma as alleged attorney of defendant No. 1 as such, defendant No. 1 could not complete the sale. Defendants No. 2 to 4, however, filed a joint written statement raising some preliminary objections that the suit is not maintainable in the present form, the plaintiff has no right to file the present suit, defendants No. 2 to 4 are the bonafide purchasers for a consideration and they made a due enquiry about the title of the vendor before its purchase and there was no defect on the title of the vendor, therefore, they paid full amount of consideration as mentioned in the sale deed and had purchased the suit property vide sale deed dated 27.06.1985 for which the plaintiff is estopped from filing the present suit by his own act and conduct. On merits, they denied the agreement to sell and pleaded that they were bona fide purchasers for valuable consideration on the basis of a valid sale deed dated 27.06.1985 executed by Samma as attorney of defendant No.



1. Denying the averments made in the plaint, prayer was made that the suit be dismissed.

6. The appellant-plaintiff had filed replication controverting the pleas taken in the written statement filed by defendants No. 2 to 4, whereas reiterating the averments made in the plaint.

7. On the basis of the pleadings of the parties, the learned trial Court framed the following issues :

1. Whether agreement of sale was executed between the plaintiff and defendant No. 1 alleged? OPP
2. Whether the plaintiff has been always ready and willing to perform his part of contract? OPD
3. Whether the plaintiff has no right to file the present suit? OPD
4. Whether defendants No. 2 to 4 are bonafide purchaser for consideration? OPD 2 to 4
5. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD 2 to 4
6. Whether the defendants are entitled to special costs? OPD 2 to 4
7. Relief

8. In support of his case, the plaintiff examined Dhannu Ram as PW1, Ash Mohd. As PW2, Munshi Khan Decree Writer as PW3, Abdul Rajak as PW4, Rehmuttan as PW5, Abdul Majid as PW6 (Deed Writer) and Sumer Khan as PW7 and produced certain documents.

9. On the other hand, to rebut the evidence of the plaintiff, defendants examined Mr. Suraj Singh, DRK as DW1, Jagdish Parshad as DW2, Munshi Ram as DW3, Ram Parkash as DW4 and Fajrudin as DW5 besides certain documents Ex. D1 to D9.

10. However, no evidence in rebuttal was adduced by the plaintiff.



11. After hearing learned counsel for the parties and on appreciation of the pleadings and evidence on record, the learned Additional Senior Sub Judge, Ferozepur Jhirka, vide judgment and decree dated 15.12.1993 decreed the suit of the plaintiff-Ishak (since deceased) for specific performance of the agreement to sell.

12. Aggrieved against the said judgment and decree dated 15.12.1993, the legal heirs of defendant No. 1-Noor Mohd. preferred an appeal before the learned Additional District Judge, Gurgaon. The learned First Appellate Court, vide judgment and decree dated 29.08.1998, allowed the appeal, setting-aside the judgment and decree of the learned trial Court and dismissed the suit of the plaintiff.

13. Being dissatisfied, appellant-Ishaq through his legal heirs filed the present regular second appeal praying for setting-aside the judgment and decree dated 29.08.1998 passed by the learned Additional District Judge, Gurgaon.

14. Learned counsel for the appellants has vehemently argued that the judgment and decree dated 29.08.1998 passed by learned Additional District Judge, Gurgaon thereby reversing the judgment and decree dated 15.12.1993 passed by learned Additional Senior Sub Judge, Ferozepur Jhirka and the same is based upon surmises and conjectures as the learned Additional District Judge, Gurgaon failed to appreciate the evidence in a correct manner. Rather, the learned Additional District Judge, Gurgaon has not appreciated the facts and circumstances of the case.

14.1 It was contended by learned counsel for the appellants that the appellants had examined Munshi Ram, Deed Writer as PW3, who had stated



that the agreement Ex. P1 and its receipt Ex. P2 dated 14.12.1984 were scribed by him at the instance of defendant No. 1-Noor Mohd. in favour of the plaintiff-Ishaq (since deceased). It was further contended that the aforesaid agreement was entered by him in his Register at Serial No. 512 dated 14.12.1984 and even he proved the note dated 27.05.1985 at the back of the agreement Ex. P3 and the receipt Ex. P4. It was further submitted that even the appellants had got examined Abdul Rajak as PW4 being the attesting witness of the agreement to sell. When agreement to sell was duly proved by the appellants before the learned Court by examining PW3 Munshi Ram being scribe and examined PW4 Abdul Rajak being attesting witness of the agreement to sell, learned Additional District Judge, Gurgaon could not discarded their testimonies and could not reverse the well reasoned judgment passed by the learned Additional Senior Sub Judge, Ferozepur Jhirka. Thus, the approach of the learned First Appellate Court in holding the documents Ex. P1 to Ex. P4 do not represent genuine transaction, is patently illegal and unsustainable. It was contended that the learned First Appellate Court had wrongly relied upon the power of attorney dated 12.10.1989 Ex. D1 allegedly executed by Noor Mohd. in favour of Samma being the husband of defendant No. 2-Waheeda and had also wrongly relied upon the copy of the judgment dated 10.05.1999 Ex. D3 and its decree sheet Ex. D4 and had also further wrongly relied upon the copy of judgment passed by learned Additional District Judge, Gurgaon dated 01.04.1992 Ex. D5 and copy of the order of learned S.J. Gurgaon dated 24.11.1990 Ex. D8 and copy of the order dated 06.01.1992 passed by learned A.S.S.J., Nuh Ex. D9. Rather the judgments were irrelevant in deciding the controversy in



question. Thus, it was submitted that since the appellants had duly proved due execution of the agreement to sell dated 14.12.1984 by examining Deed Writer Munshi Ram as PW3 and by examining Abdul Rajak as PW4, it is prayed that the judgment and decree passed by learned Additional District Judge, Gurgaon dated 29.08.1998 be set-aside and the suit of the present appellants be decreed.

15. To the contrary, learned counsel for the respondents has contended that the judgment and decree dated 29.08.1998 passed by learned Additional District Judge, Gurgaon is a well reasoned judgment, whereby the judgment and decree dated 15.12.1993 passed by learned Addl. Senior Subordinate Judge, Ferozepur Jhirka has been set-aside. It was further contended that the learned Additional District Judge has rightly appreciated the evidence on record and has rightly concluded that the alleged agreement to sell was not proved to be genuine. Thus, prayer was made that the appeal being meritless be dismissed.

16. I have heard learned counsel for the parties besides going through the record.

17. As discussed, the appellants-plaintiffs had preferred suit for possession by way of specific performance of the agreement to sell dated 14.12.1984 before the learned Additional Senior Sub Judge, Ferozepur Jhirka against the respondents-defendants Noor Mohd. (owner/vendor of suit property) and others.

18. Defendants Smt. Wahida, Smt. Moharbi and Smt. Sherbi were also impleaded as party, as one sale deed dated 27.05.1985 was executed in





favour of defendants No. 2 to 4 by Samma i.e. husband of defendant No. 2 being the General Power of Attorney of defendant No. 1-Noor Mohd.

19. It is evident from the record that the respondents–defendants had produced the General Power of Attorney dated 12.10.1979 (Ex.D1) allegedly executed by Noor Mohd. in favour of Samma and the sale deed dated 27.05.1985 (Ex.D2) executed on the basis thereof. Interestingly, Noor Mohd.-defendant No. 1 (vender/owner of suit property) had filed one separate suit for declaration and permanent injunction that he is the owner in possession of agricultural land i.e. suit property and had averred in the said suit that he never appointed Samma as his General Power of Attorney nor had he executed the Power of Attorney dated 28.09.1979, registered on 12.10.1979 and had contended that the alleged Power of Attorney in favour of Samma is also fictitious and bogus document. It was contended by Noor Mohd. in the said suit that on the basis of the said alleged forged Power of Attorney, Samma illegally sold the suit land vide registered sale deed dated 27.05.1985. The said suit was contested by Samma and others and in the written statement, they had alleged that in fact, Noor Mohd. had executed Samma as his Power of Attorney and in that capacity, Samma had sold suit property in favour of other defendants i.e. defendants No. 2 to 4 before the learned trial Court by executing a registered sale deed. In the said suit, the parties led their evidence and ultimately, the suit of Noor Mohd. was dismissed and it was held that Noor Mohd. had executed Power of Attorney in favour of Samma on 28.09.1979, duly registered on 12.10.1979. In the said suit, Samma and others had examined handwriting and fingerprint expert Som Nath Aggarwal as DW3 and said witness compared the



signatures/thumb impressessions of Noor Mohd. on the documents and submitted his report Ex. DW-8 and then came to the conclusion that Noor Mohd. had appended signatures/thumb impressions on the said Power of Attorney dated 12.10.1979.

20. Further, in addition, Samma and others had also examined Sh. R.P. Bakshi, Retired Land Acquisition Officer, who had registered the Power of Attorney and proved the due execution of the General Power of Attorney so executed in favour of Samma. Thus, on the basis of the report of DW3 Som Nath Aggarwal as well as R.P. Bakshi DW4, the suit of Nood Mohd. was dismissed on 10.05.1990.

21. Thereafter, the appeal was also filed by Noor Mohd. before the Court of Additional District Judge, Gurgaon and then the First Appellate Court affirmed the findings of the learned lower Court. Interestingly, Noor Mohd. then filed RSA-2480-1992 before this Court against the judgment and decree dated 10.05.1990 passed by learned Sub Judge Ist Class, Ferozepur Jhirka and judgment and decree dated 01.04.1994 passed by learned First Appellate Court, Gurgaon and the Co-ordinate Bench has upheld the judgments and decrees dated 10.05.1990 and 01.04.1992 and the plea of Noor Mohd. was disbelieved that he never executed any Power of Attorney in favour of Samma.

22. Further, the First Appellate Court while reversing the judgment and decree of the learned Addl. Senior Sub Judge, Ferozepur Jhirka had also appreciated the testimony of PW4-Abdul Rajak and that of PW3-Munshi Ram. While discussing testimony of PW4-Abdul Rajak, who had stepped in favour of the appellants-plaintiffs before the learned trial Court, the learned



First Appellate Court had observed that PW4-Abdul Rajak even does not know the quantum of payment of sale consideration and not much about the owner Nood Mohd. nor knows when the documents Ex. P1 and Ex. P2 were executed as such he discarded the testimony.

23. Further, the learned First Appellate Court had also scrutinized the testimony of PW3-Munshi Ram, Deed Writer of the agreement to sell and had given the findings, which read as under :-

1. *His register has no page marking;*
2. *No certificate of any authority in the start as to the number of pages, said register contained, is there;*
3. *Ex. P1 and Ex. P2 though being two different documents have been entered at one serial number. Similarly documents Ex. P3 and Ex. P4 also have been serial led at one number though he admits in his cross-examination that every document is to be recorded in a separate serial number;*
4. *There is unauthenticated over writings in such entries;*
5. *The description of land as also the narration have different line spacing and gaps in between. He admits this fact;*
6. *There is no narration of payment of consideration in his register. No such entry is there in the documents. He, thus, is not a witness of passing of consideration. He admits that he cannot remember passing of consideration of various documents, if there is no recital in the documents to this effect or note that consideration was paid in his presence; and*
7. *With regard to the entry of documents Ex. P3 and Ex. P4 some columns are blank for no explainable reasons.*

24. By appreciating the above evidence, the learned First Appellate Court came to the conclusion that the documents relied upon by the plaintiffs did not represent a genuine transaction and that the alleged agreement to sell appeared to be a procured document.



25. This Court also finds that though defendant No. 1-Noor Mohd. had filed a written statement supporting the plaintiffs, he did not step into the witness box to depose in support of the alleged agreement. In the circumstances of the present case, the non-appearance of Noor Mohd. as a witness assumed significance and lends credence to the inference drawn by the learned First Appellate Court that the alleged agreement to sell dated 14.12.1984 had been set up subsequently.

26. Having regard to the findings recorded in the earlier litigation regarding the validity of the power of attorney and the sale deed executed by Samma, and in view of the discrepancies noticed in the evidence produced by the plaintiffs, this Court finds no perversity or illegality in the judgment and decree passed by the learned First Appellate Court.

27. Consequently, no ground is made out for interference in the impugned judgment in the exercise of jurisdiction under Section 41 of the Punjab Courts Act, 1918.

28. 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 Vs. Prithvi Pal Singh and others (2019) 17 SCC 71* and *Gurbachan Singh (dead) through LRs Vs. Gurcharan Singh (dead) through LRs and others (2023) SCC Online SC 875*, 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.

29. Accordingly, the present Regular Second Appeal, being devoid of merit, is dismissed.



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

March 09, 2026  
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(AMARINDER SINGH GREWAL)  
JUDGE

Whether speaking/reasoned : Yes  
Whether reportable : No