



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

129

RSA-1591-2026 (O&M)

Date of Decision.: 28.04.2026

Dharmender Kumar

.....Appellant

Vs.

Sombir and Others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Tapan Kumar, Advocate
for the appellant.

DEEPAK GUPTA, J. (ORAL)

The present Regular Second Appeal has been filed by defendant No.3 assailing the judgment & decree dated 05.02.2026 passed by the learned First Appellate Court, whereby the appeal preferred by the defendants was dismissed and the judgment & decree dated 24.10.2017 passed by the learned trial Court decreeing the suit for possession by way of specific performance, was affirmed.

2. The brief facts necessary for adjudication of the present appeal are that the plaintiff instituted a suit for possession by way of specific performance on the basis of an agreement to sell dated 22.07.2013 allegedly executed by defendants No.1 and 2 in respect of land measuring 16 kanals for a total sale consideration of ₹15,00,000/-. A sum of ₹2,00,000/- was paid as earnest money and the date for execution and registration of the sale deed was fixed as 22.01.2014. It was pleaded that the plaintiff always remained ready and willing to perform his part of the contract and had even appeared before the Sub-Registrar on the stipulated date, but the defendants failed to execute the sale deed. It was further



alleged that in order to defeat the rights of the plaintiff, defendants No.1 and 2 executed a release deed dated 29.01.2014 in favour of defendant No.3, which was claimed to be illegal and not binding upon the rights of the plaintiff.

3. Upon notice, defendants contested the suit by denying the execution of the agreement to sell and pleaded that the transaction was in fact a mortgage for securing a loan of ₹2,00,000/-. Defendant No.3 (*appellant herein*) claimed himself to be a bona fide transferee on the strength of the release deed executed in his favour.

4. On the basis of pleadings, the learned trial Court framed necessary issues and, after appreciation of oral as well as documentary evidence led by the parties, decreed the suit holding that the agreement to sell stood duly proved; that the plaintiff had established his readiness and willingness, and that the defence set up by the defendants was not worthy of acceptance. The appeal preferred by the defendants was dismissed by the learned First Appellate Court by affirming the findings recorded by the trial Court.

5. Assailing the above concurrent findings, learned counsel for the appellant has argued that both the Courts below have erred in law in decreeing the suit, as the agreement to sell is a forged and fabricated document and the transaction in question was merely a mortgage. It is further contended that no consideration was paid to the defendants and that the appellant, being a transferee by virtue of a release deed, has acquired valid title. It is also argued that the evidence on record has not been properly appreciated by the Courts below.

6. I have heard learned counsel for the appellant and have gone through the paper-book.

7. At the outset, it needs to be noticed that the scope of



interference in a Regular Second Appeal under Section 100 of the Code of Civil Procedure is limited only to substantial questions of law. The concurrent findings of fact recorded by the Courts below are not to be interfered with unless the same are shown to be perverse or based on misreading of evidence.

8. In the present case, both the Courts below, on the basis of cogent evidence, have concurrently held that the agreement to sell dated 22.07.2013 was duly executed by defendants No.1 and 2 in favour of the plaintiff. The said finding is based upon the testimonies of attesting witnesses, the deed writer and the stamp vendor, whose statements have remained consistent and unshaken. Even otherwise, material admissions made during the course of evidence lend further support to the case of the plaintiff.

9. The plea raised by the appellant that the agreement to sell is in fact a mortgage transaction is found to be wholly untenable. The defence taken is self-contradictory inasmuch as, on one hand, the document is alleged to be forged and on the other hand reliance is placed upon the same to contend that it represents a mortgage. Such mutually destructive pleas cannot be accepted in law. Moreover, a reading of the document as a whole clearly shows that it contains all the essential ingredients of an agreement to sell, including fixation of total sale consideration, payment of earnest money, stipulation of a specific date for execution of the sale deed and a clause regarding forfeiture of earnest money, which are wholly inconsistent with the nature of a mortgage transaction.

10. The finding recorded by the Courts below with regard to readiness and willingness of the plaintiff is also borne out from the record. The plaintiff not only pleaded but also proved that he remained present before the Sub-Registrar on the stipulated date and took necessary steps to perform his part of the contract. There is no material on record to suggest



that the plaintiff ever resiled from the agreement.

11. The contention of the appellant that he has acquired valid title on the basis of the release deed is equally devoid of merit. The agreement to sell in favour of the plaintiff is prior in time. Any subsequent transfer made in favour of the appellant cannot defeat the prior contractual rights of the plaintiff. Such transfer would necessarily be subject to the outcome of the suit and cannot confer any better title upon the appellant.

12. In view of the aforesaid discussion, it is evident that the findings recorded by both the Courts below are based on proper appreciation of evidence and settled principles of law. No perversity or illegality has been pointed out which may warrant interference by this Court. The entire endeavour of the appellant is to seek re-appreciation of evidence, which is not permissible within the limited scope of jurisdiction under Section 100 CPC.

13. No substantial question of law arises for consideration in the present appeal.

14. Consequently, the present Regular Second Appeal, being devoid of merit, is hereby dismissed. The judgments and decrees passed by the Courts below are affirmed.

All the miscellaneous application(s), if any, stand disposed of.

(DEEPAK GUPTA)
JUDGE

April 28, 2026

Neetika Tuteja

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No