

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****117****RSA-1519-2023 (O&M)****Date of decision: 02.04.2026****Major Singh and another****...Appellant(s)****Vs.****Dalip Kaur and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present: - Mr. Suresh Singla, Advocate
for the appellants.

Mr. Hitesh Malik, Advocate
for respondents No.2 to 5.

NIDHI GUPTA, J.

Plaintiffs are in Second Appeal against the judgment and decree passed by the learned first Appellate Court, whereby suit filed by the appellants for specific performance has been decreed for alternative relief of refund of earnest money; thereby reversing the judgment of the Id. trial court decreeing the suit of the appellants for specific performance.

2. Brief facts of the case are that the appellants had filed the instant suit, seeking degree of specific performance of agreement to sell dated 16th January 2006 executed by defendant No.1 Dalip Kaur and her brother Jagan Singh alias Jagan Nath alias Jit Singh (Now deceased and inherited by her natural legal heir defendant No.1) in favour of plaintiffs, for sale of land measuring 2/3 share of 126 Kanals 13 Marlas, which comes out to be land measuring 84 Kanals 8 Marlas, comprising in khata



No.177/839,840,841,178/842, Khasra Nos.36//19/2(7-11), 23/2(7-11), 45//3(8-0), 36//22(8-0), 45//2(8-0), 9(8-0), 12(8-0), 19/2(6-0), 36//20/1(7-11), 21(8-0), 45//1(8-0), 10(8-0), 11(8-0), 20/2(6-0), 37//16/2(8-0), 25(8-0), 44//5/1(4-9), situated at Village Chak Hira Singh Wala, Tehsil Talwandi Sabo as per jamabandi for the year 2002-2003 (Now, khewat Nos.267 Khatauni No.876, 877,878,878/1, as per jamabandi for the year 2012-2013), for the sum of Rs.4,00,000/- and out of which an earnest money of Rs.30,000/- was paid on 16.01.2006; **and** thereafter on 10.06.2013, by mutual consent of plaintiffs & defendant No.1 considering the increase in prices of properties, the sale consideration amount was enhanced and settled as Rs.15 Lacs and another sum of Rs. 10 Lac was also paid and now by paying Rs.4,70,000/- as balance sale consideration amount or any other amount found due or ordered by this Court; **and** also for granting of consequential relief of possession of suit property i.e. of compact block/portion as described in possession delivery report on warrants of possession of land, which the defendant No.1 has obtained from mortgagees, through the SDM cum Collector Sub-Division, Talwandi Sabo; **and** in alternative suit for recovery of sum of Rs. 14,30,000/-i.e. Rs.10,30,000/- being amount already paid by the plaintiffs +Rs.4,00,000/- being penalty amount; along with interest thereon @ 18% p.a, from the date of deposit of above said amount with vendors till realization, in toto, with costs of the suit, against the defendant No.1, in case this Court for one reason or the other declines, to grant the relief of specific performance of agreement to sell dated 16.01.2006 and extension writing



dated 13.06.2013; **AND** Suit for declaration that sale deeds of No. 1449 & No.1450 dt. 13.06.2013; and No.1469 dated 14.06.2013, with regard to aforesaid land in favour of defendants No.2 to 4, shown to have been executed by defendant No.1, through her alleged GPA Tej Singh son of Lachman Singh (father of defendants No.2 to 4) & subsequent mutations No.3729,3727,3728 dated 15.06.2013, entered and sanctioned on the basis of said illegal sale deeds are illegal, null void, fraudulent, ineffective and inoperative as against the rights of the plaintiffs, in any manner; **and** suit for permanent injunction restraining the defendants No.2 to 4 from alienating the above said suit property, in any manner i.e. by way of sale, gift, exchange, mortgage, transfer, lease, conveyance deed etc in any other manner, author person, as they have no right, title or concern, authority or power to so.

3. The abovesaid suit filed by the appellants was decreed for specific performance by learned Civil Judge (Junior Division), Talwandi Sabo vide judgment and decree dated 02.03.2020. However, the Civil Appeal filed by defendants No.2 to 4 was partly allowed by the learned Additional District Judge, Bathinda vide judgment and decree dated 31.03.2023 and suit of the plaintiffs was decreed for alternative relief of recovery of sum of Rs.14,30,000/-.

4. It is *inter alia* submitted by learned counsel for the appellants/plaintiffs that defendant No.1 had executed an Agreement dated 16.01.2006 in favour of the appellants for suit land measuring 84K 8M for total sale consideration of Rs.4 lacs; of which amount of



Rs.30,000/- was paid by way of earnest money. As the suit land was embroiled in litigation at the time of execution of Agreement dated 16.01.2006, no specific date was set for execution of Sale Deed. It was only stated in the Agreement to Sell that as and when litigation of the defendant no.1 concludes, Sale Deed shall be executed. The above said facts were proved by the appellants before the learned District Courts; and in fact, the defendant no.1 has admitted the above facts. Subsequently, Defendant No.1 had even executed Endorsement dated 10.06.2013 Ex.P3 in favour of the plaintiffs whereby price of suit property was enhanced to Rs.15 lacs instead of Rs.4 lacs. Accordingly, plaintiffs had paid an amount of Rs.10 lacs more to defendant No.1 in cash at the time of execution of Endorsement dated 10.06.2013 and target date for execution of Sale Deed was set for 25.05.2016. This fact has also been admitted by defendant No.1. Prior to Target, plaintiff had served legal notice dated 19.5.2016 upon the defendant No.1. However, thereafter defendant No.1 had refused to execute Sale Deed as per the Agreement even though plaintiffs had remained ready and willing to perform the contract. Instead, Plaintiffs discovered that defendant No.1 had executed a GPA dated 21.02.2012 Ex.D9 in favour of defendant No.5. Defendant No.5 had thereafter executed the three impugned Sale Deeds in favour of his sons i.e. defendants No.2, 3 and 4. Thereafter, plaintiffs had filed present suit on 01.07.2016.



5. Learned counsel submits that keeping in view the aforesaid facts, learned Trial Court had correctly decreed the suit of the plaintiffs for specific performance.

6. Learned counsel for the appellants argues that mere execution of impugned Sale Deeds in favour of defendants No.2 to 4 would not constitute any ground to dismiss suit of the appellants for specific performance. It is submitted that Section 19 of The Specific Relief Act, 1963 lays down that relief of specific performance can be granted against a person who is not bonafide purchaser. Defendants/ Respondents No.2 to 4 claimed themselves to be bonafide purchasers of the suit property in order to save Sale-Deeds Ex.P-8 to P-10 executed in their favor by their father Tej Singh/ Defendant No.5 fraudulently on the basis of GPA of Defendant no.1 Dalip Kaur. However, both the Ld. Courts below after appreciation of evidence have concurrently held that Defendants No.2 to 4 are not bona fide purchasers as they very well knew about Agreement to Sell dated 16.1.2006 Ex.P-2, recital of which was made in Order dated 25.8.2010 Ex.P-18. It is argued that once it is held that Defendants No.2 to 4 are not bonafide purchasers, then still not granting relief of specific performance to the Plaintiffs and upholding Sale-Deeds Ex.P-8 to P-10 is erroneous.

7. It is further submitted by learned counsel for the appellants that Id. First Appellate Court has failed to consider that in any event Defendants No.2 to 4 were not entitled to plead to be bonafide purchasers as they have simply denied knowledge of Agreement Ex.P-2



whereas onus was on them to prove that they had no notice of prior Agreement. On the contrary DW-1 Gurdeep Singh has specifically admitted in his cross-examination that he knew about Agreement to Sell dated 16.1.2006 Ex.P-2. This Court in **1996(3) RCR Civil 710** titled as **'Joginder Singh Vs. Nidhan Singh'** and **2001(2) RCR Civil 227** titled as **'Joginder Singh Vs. Surinder Pal Singh'** has held that mere denial of knowledge is not enough to discharge the onus upon the vendee and onus can only be discharged by leading evidence. Once Defendants No.2 to 4 could not prove themselves to be bonafide transferee, claim of specific performance of Agreement raised by Plaintiffs could not have been defeated.

8. It is further submitted that the alternative relief has been granted to the appellants by the learned First Appellate Court on the ground that the title of the vendor/defendant No.1 and her brother Jagan Nath @ Jit Singh was not perfect. Learned counsel contends that, title of the vendor was never in question. Even no issue with regard to defective/imperfect title of Dalip Kaur was ever framed, nor any such question was involved in the matter. Rather parties in dispute were ad idem about the perfect title of defendant No.1. Moreover, on the one hand, First Appellate Court has held that title of defendant No.1 Dalip Kaur was defective qua the plaintiffs; whereas to the contrary, learned First Appellate Court has upheld the Sale Deeds executed in favour of defendants No. 2 to 4 by the same vendor qua the same property while deciding issue No.3. Thus, self contradictory/mutually destructive findings



have been recorded by learned First Appellate Court. It is argued that in case the learned First Appellate Court had reached to the conclusion that defendant No.1 did not have perfect title then the suit for declaration/issue No.3 should have been decreed in favour of the plaintiffs.

9. Learned counsel for the appellants further submits that learned First Appellate Court while passing Impugned Judgment & Decree has failed to look into certain facts/ circumstances such as:

(1) GPA Ex.D-9 in favor of Defendant no.5 Tej Singh (father of Defendants No.2 to 4) and Agreement to Sell Ex.D-10 in favor of Defendants No.3 & 4 are of same date i.e. 21.2.2012.

(ii) Agreement Ex.D-10 executed by Defendant no.1 Dalip Kaur is of 88 Kanals whereas she was owner of 84K-8M.

(iii) There was no Agreement to Sell in favor of Defendant No.2 Surjeet Singh whereas Sale Deed was executed in his favor.

(iv) It is recorded in Agreement Ex.D-10 that entire sale consideration of Rs.1 Crore stands paid in cash whereas in cross-examination of DW-1 Gurdeep Singh/Defendant no.4, it has come out that payment was made on 13.6.2013.

(v) Sale Deeds Ex.D-1, D-2 & D-3 have been executed by father in favor of his sons.

(vi) Defendant no.5 Tej Singh never entered into witness box.



(vii) Sale Deeds Ex.P-8 to P-10 have been executed in haste i.e. within 3 days of Extension/ Endorsement Ex.P-3, in order to defeat the valuable rights of the Plaintiffs/Appellants.

(viii) Sale Deeds were executed by Defendant no.5 allegedly on behalf of Dalip Kaur who was not present at the time of execution of Sale Deeds, however it has come in cross-examination of DW-1 that sale consideration was given to her in front of Tehsildar, which seems to be improbable, especially when Dalip Kaur has specifically denied receipt of any amount.

10. All these facts when seen in entirety makes it abundantly clear that execution of Sale Deeds Ex.P-8 to P-10 in favor of Defendants No.2 to 4 was concluded under suspicious/questionable circumstances. In view thereof, no relief should have been granted to Defendants.

11. It is lastly submitted that learned District Courts have failed to appreciate that plaintiffs were always ready and willing to perform their part of contract of Agreement to Sell dated 16.01.2006 Ex.P2 and extension dated 10.06.2013 Ex.P3.

12. It is accordingly prayed that the present Second Appeal be accepted and the Impugned Judgment & Decree dated 31.3.2023 passed by Ld. Addl. District Judge, Bathinda be set-aside; and Judgment & Decree dated 2.3.2020 passed by the Ld. Trial Court (Civil Judge Jr. Div., Bathinda) may kindly be restored/ upheld and resultantly Suit filed by the present Plaintiffs/ Appellants may kindly be decreed in toto.

13. *Per contra*, learned counsel for the respondents/defendants No. 2 to 5 vehemently opposes submissions made on behalf of the



plaintiffs/appellants and submits that the plaintiffs and defendant No.1 have collusively sought to deprive the defendants of the suit property which they had purchased for valuable sale consideration. Defendants No.2 to 4 are the bonafide purchasers of the property in dispute. It is submitted that the sale deed regarding the land to be sold by defendant No.1 and her brother Jagannath was to be executed within two months from the date of decision of Civil Revenue case/ litigation pending between the defendant No.1 and her brother and other parties to the pending suit regarding the property to be sold to the plaintiffs. However, in actual fact, the alleged agreement to sell dated 16.1.2006, is not in existence as, it has come to an end on the death of Jagan Singh, brother of defendant No.1 Dalip Kaur, who was a party to the execution to the alleged agreement. Furthermore, the agreement to sell dated 16.1.2006 has been executed regarding 2/3 share out of the total property measuring 126 Kanals 13 Marias, to be sold. Khasra numbers of that property have not been mentioned or specified in the said agreement, so the said agreement is illegal and not enforceable. Even further, Dalip Kaur defendant No.1 impliedly refused to sell the suit land on 14.06.2013 and 13.06.2013 i.e. to the plaintiffs, the dates on which defendant No. 1 sold the suit land in favour of the defendants no.2 to 5. So the suit should have been filed within three years from the dates on which the sale deeds have been executed in favour of the answering defendants. Agreement to sell dated 16.01.2006 is not a concluded contract of specific performance between the plaintiffs and defendant No.1 as more terms of the alleged



agreement were formulated, as is evident from the averments made in the plaint. The plaintiffs have also challenged the validity of the sale deeds executed by Dalip Kaur defendant No.1 in favour of the defendants no.2 to 4 regarding the suit property, which are of for a total consideration of Rs.1,05,60,000/- being consideration of three sale deeds. So, the plaintiffs should have paid ad-valorem Court fee on the consideration amount of these sale deeds i.e. Rs 1,05,60,000/-. The suit is hit by section 10 CPC as a suit has been filed by Nachhattar Singh, Gurdev Singh sons of Jangir Singh against the present plaintiffs and Dalip Kaur, her brother Jagan Singh and against the defendants No.2 to 4 regarding the property in which the property in the present suit is also included in that previously filed suit, which is pending in Court; as the parties in the present suit and the parties in the previously filed suit by Nachhattar Singh, Gurdev Singh sons of Jangir Singh are the same and the property involved in the present suit and the previously filed suit is the same. Writing dated 10.6.2013 does not bear the thumb impression of Dalip Kaur defendant No.1, by which the alleged agreement to sell dated 16.01.2006 is alleged to have been extended up to 25.05.2016. The said writing is also not a part of the agreement dated 16.1.2006. So, this alleged extended agreement cannot be specifically performed.

14. It is accordingly prayed that the present Appeal be dismissed.

15. No other argument is raised by learned counsel for the parties. I have heard ld. counsel and perused the case file in detail. I find no merit in the submissions made on behalf of the appellants/plaintiffs.



16. It is admitted and undisputed finding of fact on record that on the date of execution of Agreement to Sell dated 16.01.2006, the vendor i.e. defendant No.1 Dalip Kaur and her brother Jagan Nath were not having valid title of the suit property. This fact has been admitted by the plaintiff while appearing as PW1. This is due to the fact that in respect of the suit property, Civil Suit No. 110 of 2015 Ex.D13 had been filed by Nachhattar Singh son of Jagir Singh, which was still pending.

17. Relevant findings of the learned First Appellate Court in this regard are contained in para 21, 22 and 23 of the judgment dated 31.03.2023 which read as follows: -

“21. Dalip Kaur and Jagan Nath had entered into agreement to sell Ex. P2, with the respondents No. 1 & 2 on 16.01.2006. At that time, a civil suit No. 110 of 2005, was pending between Dalip Kaur etc on the one hand Nachhattar Singh son of Jagan Nath, Nahar Singh and Tej Singh father of appellants on the other hand, as Jangir Singh paternal uncle of Dalip Kaur and Lal Dass got a collusive decree suffered in his favour. Tej Singh son of Lachhman Singh and Nahar Singh son of Partap Singh got alleged executed a Will of the suit property from the impostor of Jangir Singh.

*22. Admittedly, a civil suit claiming the ownership and possession of the property by Nachhattar Singh son of Jangir Singh is still pending in appeal on the files of this Court on the ground that decree of declaration of ownership of suit property in favour of his father Jangir Singh. Nachhattar Singh is neither necessary nor proper party in this suit for specific performance as per **Vajra Munnema Vs. Laxma Reddy AIR 2007 AP203.***



23. In civil suit No. 110 of 10.02.2005, Ex.D13, Dalip Kaur challenged the judgment/decreed dated 05.01.1990 Ex.D11 and Ex.D12 of declaration of rights of suit property in favour of Jangir Singh, brother of Lal Das and husband of Dalip Kaur.

Dalip Kaur withdrew that suit on 08.11.2008 admitting the validity of the decree dated 05.01.1990 and in favour of Jangir Singh and validity of Will of Jangir Singh in favour of Tej Singh and Nahar Singh.

Meaning thereby, the vendors Dalip Kaur and Jagan Nath were not having valid title to the suit property at the time of execution of agreement to sell in favour of plaintiff. The plaintiff while appearing as PW-1 has also admitted this fact. It also leads to inference that vendors were also not having valid title on 08.11.2008."

18. Thus, as there was no perfect title of the vendor over the suit property on the date of execution of Agreement to Sell dated 16.01.2006, it was correctly held that plaintiffs were not entitled to decree for specific performance.

19. Furthermore, it is also admitted fact on record that Agreement dated 16.01.2006 was a contingent contract in-as-much as, as per the Agreement dated 16.01.2006, Sale Deed was to be executed within 2 months after the decision of pending Civil Suit. Thus, execution of Sale Deed was dependent upon the happening of future event. It is no longer *res integra* that contingent contract of sale cannot be specifically enforced. In holding as above, learned First Appellate Court has relied upon judgment of the Allahabad High Court passed in **Durga Prasad vs.**



Smt. Lilavati AIR 1972 ALL 396 para 29. No judgment to the contrary has been cited by learned counsel for the appellants.

20. Relevant findings in this respect are contained in para 26 of the judgment dated 31.03.2023, which are as under: -

“26. The execution of sale deed was dependant upon the happening of future event i.e. decision of civil case in favour of the vendors. Hence, execution of sale deed was dependent on happening of collateral future event, i.e decision of case pending in any Court in favour of vendors.

The civil litigation is not proved to be decided in favour of the vendors. The mutation of the suit property reflected in the name of vendors Dalip Kaur and Jagan Nath after the redemption of suit property mortgaged by Lal Dass in favour of predecessor-in-interest of plaintiffs. After the death of Jagan Nath, mutation of inheritance sanctioned in favour of Dalip Kaur. While decree of ownership dated 05.01.1990 is still intact in the name of Jangir Singh, brother of Lal Dass.

As per settled law, mutation does not create any right of ownership.

In fact, the future even of termination of civil litigation, subject matter of the agreement, in favour of vendors is not proved by the plaintiff.”

21. Furthermore, it is also proved on record that defendant No.1 had executed a registered General Power of Attorney dated 21.02.2012 in favour of defendant No.5. On the basis of the said registered GPA, defendant No.5 had executed registered Sale Deeds No.1449 and 1450 both dated 13.06.2013; and Sale Deed No.1469 dated 14.06.2013 of the suit property in favour of his sons i.e. defendants No. 2 to 4. It is the case



of the plaintiffs that thereafter defendant No.1 had executed subsequent Agreement/Endorsement dated 10.06.2013 Ex.P-3 in favour of the plaintiffs; thereby agreeing to enhance sale consideration of Rs.15 lacs upon which further amount of earnest money of Rs.10 lacs was paid by the plaintiffs to defendant No.1 making total earnest money of Rs.10,30,000/-. Although defendant No.1 in her written statement had admitted Writing dated 10.06.2013 but she had stated that it was the plaintiffs who had not performed their part of Agreement as they did not possess the balance sale consideration. Moreover, Defendant No.1 had not stepped into witness box in support of her said averments in the written statement. In this circumstance, learned First Appellate Court has correctly held that Writing dated 10.06.2013 constitutes a novation of previous contract dated 16.01.2006 as vide the Writing dated 10.06.2013, new terms of contract were established in which total sale consideration was enhanced upto Rs. 15 lacs and target date was settled for 25.05.2016. Correctly therefore, Agreement dated 16.01.2006 was no longer enforceable. Relevant findings of the learned First Appellate Court are contained in paras 35, 36, 38 and 39 of the judgment dated 31.03.2023, which are as under: -

“35. “In the case in hand, one of the vendor died and other allegedly inherited his property and executed the new agreement Ex.P3 with a new price, which results in a new agreement.

However, the Ex.P3 is written on the back of agreement to sell dated 16.01.2006, mentioning as agreement of



*enhancement of price and extension of date of execution, but it discharges the original agreement dated 16.01.2006 being novation of agreement as per law laid down in **Ayodhya Prasad Vs. Phulesara Bhagawan AIR 2008 ALL 169.***

36. Dalip Kaur already executed agreement to sell Ex.P9 and power of attorney Ex.P10 dated 21.02.2012 in favour of appellants and their father respectively after receiving the entire sale consideration.

XXXXXXXXXXXXXXXXXX

38. Even otherwise specific performance of writing dated 10.06.2013 cannot be granted as already discussed as perfect title of the vendors was not established.

39. The writing dated 10.06.2013 cannot said to be antedated because Dalip Kaur executant did not dispute the date of writing in her written statement. But the writing is not entered in any deed writer's register, however scribe advocate Kuldeep Singh had stated that it was executed on 10.06.2013. Appellant challenges the act and conduct of Dalip Kaur that she executed writing dated 10.06.2013 after an agreement with appellants on 21.02.2012 after receiving the entire sale consideration. But it is pointed out that act and conduct of Dalip Kaur is not much avail to the appellants keeping in view her status of title to the suit property at the time of entering into agreements to sell with the defendants-appellants as well as plaintiffs. Inadequacy of consideration as per settled law does not effect the contract of sale unless proved otherwise."

22. It was keeping in view all of the above said factors that they learned first Appellate Court had decreed suit of the plaintiff for alternate relief of refund of earnest amount. I find no error in the impugned



judgment. It is established from the discussion above that suit of the plaintiff could not have been decreed for specific performance. The learned trial Court has ignored material aspects of the matter.

23. Even otherwise, it is undisputed position in law that this Court in Second Appeal has limited jurisdiction to interfere in the findings of fact rendered by the Courts below; as held by the Hon'ble Supreme Court in **M/s. Shivali Enterprises v. Godawari (Deceased) (SC) : Law Finder Doc ID # 2034559**, as under: -

*"14. This Court, in the case of **Randhir Kaur v. Prithvi Pal Singh and Others (2019) 17 SCC 71**, after considering the scope of interference under the old section 100 of the Civil Procedure Code, 1908 (for short "CPC") and Section 41 of the Punjab Act, has observed thus:*

"15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact."

15. It could thus be seen that this Court has held that, even when a court exercises jurisdiction under Section 41 of the Punjab Act, it cannot interfere with the findings of fact in second appeal on the ground that the said findings are erroneous, howsoever gross or inexcusable the error may seem to be. It has been held that the findings of fact would also include the findings on the basis of documentary evidence. The jurisdiction under Section 41 of the Punjab Act would be available only when there is a substantial error or defect in

the procedure provided by the CPC or by any other law for the time being in force.”

24. In the present case, appellants have been unable to show any procedural or other legal error.
25. Learned counsel for the appellants are unable to dispute or controvert the above said facts and findings, or even the legal position noted above.
26. The present Regular Second Appeal is accordingly **dismissed**.
27. Pending applications, if any, stand disposed of.

02.04.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE