



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

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**RSA-1855-2026 (O&M)
Date of decision: 13.05.2026**

LEELAWATI

....Appellant

Versus

RAMESHWAR

...Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. Jagdish Manchanda, Sr. Advocate with
Mr. Marvi Singh, Advocate and
Mr. N.C. Manchanda, Advocate and
Mr. Devyansh, Advocate for the appellant.

YASHVIR SINGH RATHOR. J.(Oral)

1. This Regular Second Appeal is directed against the judgment and decree dated 24.04.2026 passed by the Court of learned Additional District Judge, Palwal, vide which the appeal preferred by the defendant against the judgment and decree dated 08.05.2024 passed by the learned Civil Judge (Senior Division), Palwal, whereby the suit instituted by the respondent was decreed, has been dismissed.

2. Case of the plaintiff is that defendant entered into an agreement to sell the house in question (suit property) owned by her in favour of plaintiff vide agreement to sell dated 20.01.2015 for a total sale consideration of Rs.60,00,000/- out of which a sum of Rs.40,00,000/- was paid in cash as earnest money in the presence of witnesses on the same day against receipt. The sale deed was to be executed on or before 19.12.2015 on receipt of balance sale consideration. On



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19.12.2015, plaintiff went to the office of Sub-Registrar, Palwal alongwith balance sale consideration and other incidental charges but defendant did not turn up and failed to perform her part of the agreement. Rather, she entered into an agreement to sell the suit property with one Mohan on 07.04.2016. It is further submitted that plaintiff has always been ready and willing and he is still ready and willing to get the sale deed executed and registered and repeated requests by the plaintiff to defendant to execute the sale deed fell on deaf ears, which necessitated the present suit. By way of present suit, plaintiff sought a decree for possession by way of specific performance of the agreement to sell in respect of the suit property.

3. Defendant in her written statement has denied the execution of the agreement or receipt of the earnest money. A plea has been taken that the plaintiff in collusion with defendant's son namely Pratap obtained her thumb impressions on some blank papers and they might have converted the same into an agreement to sell. Her son has committed fraud with her. It has been denied that defendant has executed any other agreement in favour of one Mohan on 07.04.2016. It is further submitted that defendant owns only one residential house which is the suit property and she never executed the agreement. The value of the suit property was Rs.1,00,00,000/- and there was no reason to sell the same for such a meager amount and dismissal of the suit was sought.

4. From the pleadings of the parties, following issues were framed :-

“1. Whether the plaintiff is entitled to a decree for specific performance by way of possession of contract/agreement to sell dated 20.01.2015 as well as permanent prohibitory injunction, as prayed for? OPD

2. Whether the plaintiff has no locus standi and cause of action to file the present suit?OPD



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3. *Whether the suit of the plaintiff is not maintainable in the present form?OPD*

4. *Whether the plaintiff is estopped by his own act, conduct and acquiescence from filing the present suit.OPD*

5. *Relief.”*

5. Plaintiff in support of his case has examined PW-1 Birpal, Halqa Patwari, PW-2 Ranjeet, Stamp Vendor, PW-3 S.S. Dalal, Advocate, PW-4 Narveer, PW-5 Preetam Singh, and plaintiff-Rameshwar himself appeared as PW-6 and he also examined PW-7 Lokesh, House Tax Clerk and he led in evidence documents Ex. P1 to Ex. P-15 and Mark PA to Mark PE and Mark DA.

5. On the other hand, defendant examined herself as DW-1 and has also led in evidence one FIR No.641 dated 26.10.2016, under Sections 420, 406, 201 and 120-B IPC, Police Station City Palwal, Ex.D1.

6. After hearing the parties and on going through the material on file, the trial Court came to the conclusion that the defendant had executed the agreement in question by agreeing to sell the suit property in favour of plaintiff for a sum of Rs.60,00,000/- out of which she received Rs.40,00,000/- as earnest money and that she has failed to execute the sale deed. The plea of defendant that her thumb impressions were obtained fraudulently by her son in collusion with the plaintiff was also negated. It was further held that defendant has failed to perform her part of the agreement and that plaintiff was ready and willing to perform his part of the contract and issue No.1 was decided in favour of the plaintiff. Issues No.2 to 4 were decided against defendant being not pressed and the suit was decreed.

7. Feeling aggrieved, defendant preferred an appeal and the same has



been dismissed vide impugned judgment and decree dated 24.04.2026.

8. Aggrieved with the same, present regular second appeal has been instituted.

9. Learned Senior Counsel for the appellant has been heard and material on file has been perused.

10. Learned Senior Counsel for the appellant argued that the judgments and decrees passed by the Courts below are based on conjectures and surmises. The facts of the case and material on file have not been appreciated in the correct perspective while decreeing the suit and the same are unsustainable in law. Learned counsel further contended that the agreement in question was a result of collusion between the plaintiff and defendant's son who fraudulently obtained her thumb impressions on blank paper which have been converted into an agreement to sell. The stamp paper was also purchased by her son namely Partap, who is also an attesting witness on this agreement to sell as well as receipt regarding payment of earnest money of Rs.40,00,000/-. Learned counsel contended that the statements of the attesting witnesses and scribe regarding passing of consideration are contradictory but the Courts below have not taken into consideration this fact while decreeing the suit. Learned counsel further contended that plaintiff did not have sufficient funds and he alongwith his father and brother had allegedly sold some land for an amount of Rs.1,30,00,000/- and plaintiff's father had allegedly withdrawn a sum of Rs.65,00,000/- from his bank account but the amount had been utilized for purchasing some other land and out of the same amount, the plaintiff claims to have paid the earnest amount of Rs.40,00,000/- to the defendant but infact, plaintiff did not have the money and the evidence with regard to



passing of earnest money is contradictory but the Courts below have ignored this fact and evidence has been misread and misapplied. Learned counsel further contended that the evidence led by the plaintiff has been wrongly relied upon and version of defendant has been ignored while decreeing the suit and the impugned judgments and decrees are thus liable to be set aside.

11. However, I do not find any force in the contentions raised by learned counsel for the appellant and the appeal in hand is liable to be dismissed for the reasons discussed hereinafter.

12. It is not in dispute that the defendant is the owner of the suit property and as per version of plaintiff, she had agreed to sell the same in favour of plaintiff vide agreement to sell dated 20.01.2015 for a total sale consideration of Rs.60,00,000/- out of which a sum of Rs.40,00,000/- was paid as earnest money in cash in the presence of witnesses on the same day against receipt duly thumb marked by the defendant and signed by witnesses. Sale deed was to be executed on 19.12.2015 on payment of balance sale consideration on which date the defendant did not turn up, whereas, plaintiff had always been ready and willing to get the sale deed executed on payment of balance sale consideration. A legal notice dated 22.12.2015 was also issued to the defendant but defendant did not respond to the same and thereafter, another notice dated 30.03.2015 was also served, which also met with the same fate and thereafter, the suit was instituted.

13. On the other hand, stand of defendant in the pleading as well as while leading evidence is that no agreement to sell was executed by her and no earnest money was paid to her. Infact, plaintiff in collusion with her son namely Partap had obtained her thumb impressions on some blank papers which have been



misused and the agreement to sell has been prepared.

14. In order to prove the execution of the agreement, plaintiff has examined its scribe namely PW-3 S.S. Dalal, Advocate as well as both the attesting witnesses namely PW-4 Narveer and PW-5 Preetam Singh. All of them have categorically deposed that defendant had entered into an agreement to sell the suit property in favour of plaintiff vide agreement to sell Ex.P4 for a sum of Rs.60,00,000/- out of which a sum of Rs.40,00,000/- was paid as earnest money vide receipt Ex. P5 which were duly thumb marked by the defendant and attested by them in the presence of her son namely Partap, who had also attested the documents. Nothing favourable could be extracted during their cross-examination so as to shake their credibility and their stand has remained consistent throughout, so far as execution of the agreement and receipt are concerned. Stand of defendant that her thumb impressions had been obtained on blank papers by plaintiff in collusion with her son namely Partap has also not been accepted by the trial Court as well as by the First Appellate Court. Though, she has alleged that her son Partap had connived with the plaintiff and played fraud upon her, yet no complaint has been filed by her against her own son as well as plaintiff for committing the said fraud or cheating. Had her own son played fraud upon her, defendant would not have remained a mute spectator and would have certainly taken some action against her son as well as plaintiff and in these circumstances, self-serving and bald statement of defendant has rightly been ignored by the trial Court as well as by the First Appellant Court. Moreover, once defendant admitted her thumb impressions on the agreement as well as receipt, heavy onus was upon her to prove that the same had been obtained by fraud but except her self-serving and



hald statement, no evidence has been led to prove the allegations of fraud which have to be proved like any other criminal charge. In these circumstances, the plea of fraud raised by the defendant that plaintiff and her own son had colluded with each other and have got prepared a fabricated agreement to sell and receipt cannot be believed.

15. Besides this, trial Court has also observed that a perusal of the agreement Ex.P4 and receipt Ex.P-5 shows that there is proper alignment and line setting which does not point towards the fact that same have been typed on blank papers which were allegedly bearing thumb impressions of defendant. It has been further observed that thumb impressions on the receipt Ex.P5 are on a revenue stamp as well as the paper at the same time and are in proper alignment and this fact also falsifies the claim of defendant-Leelawati that her thumb impressions were obtained on blank papers and subsequently converted into an agreement to sell Ex.P4 and receipt Ex.P5. It has been further observed that no reasonable prudent person will put his or her thumb impressions on a blank stamp paper and paper having revenue stamp.

16. So far as financial capacity of plaintiff is concerned, it has come in evidence that plaintiff alongwith his father and brother had sold some land on 01.07.2014 for a sum of Rs.1,30,00,000/- vide sale deed Mark PE and his father had withdrawn a sum of Rs.65,00,000/- from his bank account on 11.10.2014 as shown in the statement of account Mark PD, which as per version of plaintiff were lying in the house and a sum of Rs.40,00,000/- was paid to the defendant towards earnest money. The financial capacity of plaintiff to pay the earnest money thus also stands duly established as also held by both the Courts below.



17. Besides this, defendant-Leelawati during her cross-examination has also admitted that legal notice was served upon her by the plaintiff prior to institution of the suit and she never replied to the notice, which itself goes to show that plaintiff had relied upon the agreement to sell Ex. P4 and receipt Ex. P5 and had called upon her to execute the sale deed in his favour. Had she not executed the agreement, she should have replied to the notice and controverted the contents of the same but she remained silent and this fact also goes against her.

18. Another contention raised by learned counsel for the appellant is that once major portion of the sale consideration amounting to Rs.40 lakhs out of the total sale consideration of Rs.60 lakhs was paid as earnest money on 20.01.2015, there was no reason to fix the date for execution of the sale deed after 11 months and the plaintiff would have got the sale deed executed immediately and this itself is a suspicious circumstance but the same is also without any force. Only a sum of Rs.40 lakhs was paid and balance amount of Rs.20 lakhs was yet to be paid and in these circumstances, it cannot be termed as a suspicious circumstance regarding the authenticity of the transaction, merely because the parties had agreed to get the sale deed executed after 11 months of the execution of the agreement.

19. So far as readiness and willingness of the plaintiff to perform his part of the agreement is concerned, it is pertinent to mention that defendant has denied execution of the agreement to sell and as such, she is precluded from taking this plea. Moreover, plaintiff had duly served notices upon the defendant twice prior to institution of the suit but she failed to respond to the same and did not execute the sale deed and all these circumstances go a long way to show that plaintiff has always been ready and willing to perform his part of the agreement.



20. The learned trial Court as well as the First Appellate Court have thus appreciated the facts of the case and material on file in the correct perspective and the judgments under challenge do not suffer from any infirmity or error in law or procedure so as to warrant interference in the second appeal.

21. It is well settled that in Regular Second Appeal, this Court has limited jurisdiction to interfere in the concurrent findings of facts returned by both the Courts below. Hon'ble Supreme Court in Law Finder Doc Id # 2034559 - *M/s. Shivali Enterprises v. Godawari (Deceased) (SC)*; ; has held as under:-

*"14. This Court, in the case of (2019) 17 SCC 71- **Randhir Kaur v. Prithvi Pal Singh and Others**, 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."
(Emphasis added)"



22. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees passed by the Trial Court and the Appellate Court and the present Regular Second Appeal is hereby dismissed. No order as to costs.
23. All pending applications, if any, shall stand disposed of.

13.05.2026
amandeep

(YASHVIR SINGH RATHOR)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No