

(109) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-2974-2023 (O&M)
Date of Decision: 27.04.2026

KULWANT KAUR AND ANOTHER ...Appellants

Vs.

BALWINDER KAUR (SINCE DECEASED) THROUGH LRS AND
OTHERS ...Respondents

CORAM:- HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Present: Mr. Rajinder Sharma, Advocate
for the appellants/plaintiffs.

VIRINDER AGGARWAL, J. (Oral)

1. The present Regular Second Appeal has been filed by the appellants-plaintiffs assailing the concurrent findings recorded by the Courts below, whereby their suit for specific performance of the agreement to sell dated 08.12.2009 has been dismissed. The learned Civil Judge (Junior Division), Ajnala, dismissed the suit vide judgment and decree dated 18.07.2017, and the appeal preferred by the appellants-plaintiffs was also dismissed by the learned Additional District Judge, Amritsar, vide judgment and decree dated 17.12.2022.

2. Briefly stated, the appellants-plaintiffs instituted a suit for specific performance of the agreement to sell dated 08.12.2009. In the alternative, they sought recovery of a sum of ₹4,00,000/- along with interest @ 18% per annum, as well as confirmation of possession; and further a decree for possession along with consequential relief of permanent injunction restraining the defendants from alienating the suit property. It was pleaded that Dalbir Singh was the original owner of the suit land, who entered into an



agreement to sell the same in favour of the plaintiffs on 08.12.2009 after receiving earnest money of ₹2,00,000/-. As per the terms of the agreement, the sale deed was to be executed and registered on or before 30.04.2010 upon payment of the balance sale consideration. It was further averred that possession of the suit land was delivered to the plaintiffs at the time of execution of the agreement. The plaintiffs asserted that they have always been ready and willing to perform their part of the contract and continue to remain so. However, before the execution of the sale deed, Dalbir Singh expired, and his estate devolved upon the present respondents–defendants as his legal representatives. Despite this, the respondents failed to honour the agreement. The plaintiffs claimed that on the stipulated date, they remained present in the office of the Tehsildar, Ajnala, along with the balance sale consideration and necessary registration charges, but the defendants failed to appear and execute the sale deed. Despite repeated requests, the legal heirs of Dalbir Singh did not perform their obligations, compelling the plaintiffs to file the present suit. Upon notice, the defendants appeared and contested the suit by filing a written statement, wherein they categorically denied the execution of any agreement to sell by Dalbir Singh and also disputed the receipt of earnest money. It was specifically pleaded that the alleged agreement to sell is a result of fraud and fabrication and is not binding upon them. The plaintiffs filed a replication reiterating the averments made in the plaint and controverting those raised in the written statement. On the basis of the pleadings of the parties, the learned trial Court framed the following issues for adjudication:



- 1. Whether the plaintiffs are entitled to the relief of specific performance of an agreement to sell dated 08.12.2009? OPP.*
- 2. Whether the plaintiffs are entitled to the relief of permanent injunction? OPP*
- 3. Whether the suit is not maintainable in the present form? OPD.*
- 4. Whether the plaintiffs have not locus standi or cause of action? OPD.*
- 5. Whether the plaintiffs have not come to the court with clean hands?OPD.*
- 6. Whether the suit of plaintiff is bad for mis joinder and non joinder of necessary party? OPD.*
- 7. Relief.*

3. The parties were afforded adequate opportunities to lead their respective evidence in support of their claims and defences. Upon appreciation of the pleadings and evidence on record, the learned Civil Judge dismissed the suit filed by the plaintiffs. Aggrieved against the said judgment and decree, the appellants-plaintiffs preferred an appeal; however, the learned First Appellate Court, after reappraisal of the entire material on record, also dismissed the appeal and affirmed the findings recorded by the trial Court. Still dissatisfied with the concurrent judgments and decrees passed by both the Courts below, the appellants-plaintiffs have filed the present Regular Second Appeal.

4. Learned counsel for the appellants-plaintiffs contended that the concurrent findings recorded by both the Courts below are perverse, being based on surmises and conjectures, and reflect a failure to apply a judicious mind to the evidence available on record. It was argued that the agreement to sell dated 08.12.2009 stood duly proved through the testimonies of PW-2 Dalwinder Singh, an attesting witness, and PW-3 Vijay Kumar, the stamp vendor, whose statements have not been properly appreciated by the Courts

below. It was further submitted that the learned Courts committed a grave error in undertaking comparison of the disputed signatures of Dalbir Singh on their own, without seeking the opinion of a handwriting or document expert. Such an approach, according to learned counsel, is legally unsustainable, particularly when the execution of the agreement itself was specifically denied by the defendants. Learned counsel also contended that the comparison made by the Courts below was flawed, inasmuch as the disputed signatures were compared with admitted signatures appearing on a document of the year 1992. It was argued that, with the passage of considerable time, natural variations in handwriting and signatures are bound to occur, and therefore, such comparison could not form a reliable basis to disbelieve the agreement to sell. Additionally, it was urged that the application filed by the appellants-plaintiffs for leading additional evidence was wrongly dismissed, thereby causing serious prejudice to their case. On these grounds, it was prayed that the impugned judgments and decrees be set aside and the present appeal be allowed.

5. The learned Courts below have duly and carefully appreciated the pleadings as well as the evidence brought on record by the parties. It has been noticed that, as per the terms of the agreement to sell, the date fixed for execution and registration of the sale deed was 30.04.2010. However, during the lifetime of Dalbir Singh, no notice or communication was issued by the appellants-plaintiffs calling upon him to specifically perform his part of the contract, which casts a serious doubt on the plea of continuous readiness and willingness. It has further been found that there existed an order dated 04.01.2006 passed by a Court of competent jurisdiction, whereby the suit

property stood attached in favour of one Rachpal Singh. This fact also finds reflection in the *Jamabandi* for the year 2009–10 (Ex. P-6), wherein a reference to *Rapat* No. 221 is recorded in column No. 8, indicating the attachment of the suit land. The learned First Appellate Court has rightly observed that when the property in question was already under attachment, it is difficult to accept that the appellants-plaintiffs would have entered into the agreement to sell without verifying the status and encumbrances attached to the property. This circumstance further renders the case set up by the plaintiffs doubtful and undermines the genuineness of the alleged agreement.

6. Learned counsel for the appellants contended that the suit was instituted on the basis of the *Jamabandi* for the year 2004-05, whereas the entry regarding attachment appears only in the *Jamabandi* for the year 2009-10. However, this contention does not merit acceptance. The record reveals that the order of attachment was passed on 04.01.2006 by a Court of competent jurisdiction, and *Rapat* No. 221 reflecting such attachment had already been entered prior to the date of the alleged agreement to sell. It was incumbent upon the plaintiffs to verify the status and encumbrances of the suit property before entering into the transaction. Once the property stood attached by order of the Court, the defendants were legally restrained from alienating the same. Furthermore, the learned Courts below have rightly concluded that the appellants-plaintiffs failed to establish their continuous readiness and willingness to perform their part of the contract. No cogent documentary evidence has been placed on record to show that the plaintiffs had appeared before the office of the Sub-Registrar on 30.04.2010 with the balance sale consideration and necessary expenses. A significant discrepancy has also been



noticed in the evidence led by the plaintiffs. In her affidavit, PW-1 Kulwant Kaur categorically stated that the original affidavit evidencing her presence was Ex. P-2; however, on scrutiny, Ex. P-2 is found to be an affidavit of Dalbir Singh and not of the plaintiff. This inconsistency further weakens the case of the appellants. The learned First Appellate Court has also rightly dismissed the application for additional evidence, as the appellants failed to demonstrate that despite exercising due diligence, they were unable to produce the said evidence at the appropriate stage. On the contrary, the affidavit Ex. PW-1/A tendered by way of examination-in-chief indicates an attempt to mislead the Court by projecting Ex. P-2 as the affidavit of the plaintiffs, whereas it in fact pertained to the defendant. This clearly shows lack of due diligence on the part of the appellants.

7. Furthermore, Vijay Kumar, the stamp vendor examined by the appellants-plaintiffs, failed to produce or prove any contemporaneous record or registered entry evidencing the purchase of stamp paper by Dalbir Singh for the execution of the alleged agreement to sell. In the absence of such supporting documentary evidence, the testimony of the stamp vendor does not inspire sufficient confidence to establish the genuineness of the transaction. In these circumstances, both the Courts below, upon a thorough appreciation of the oral as well as documentary evidence on record, have returned concurrent findings that the appellants-plaintiffs have failed to satisfactorily prove (i) that Dalbir Singh had validly entered into the agreement to sell, (ii) that he had purchased the requisite stamp papers for the said purpose, and (iii) that the plaintiffs were continuously ready and willing to perform their part of the contract. The findings so recorded are based on proper evaluation of evidence



and cannot be said to be perverse or contrary to the material on record. No substantial question of law arises for consideration in the present Regular Second Appeal. Accordingly, the impugned judgments and decrees do not warrant any interference by this Court. The present appeal, being devoid of merit, is hereby **dismissed**.

8. Pending applications, if any, shall stands disposed of.

(VIRINDER AGGARWAL)
JUDGE

27.04.2026

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Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*