



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

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RSA-5336-2012(O&amp;M)

Date of decision: 23.02.2026

Jagir Singh &amp; Another

...Appellant(s)

Vs.

Bhalinder Singh &amp; Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Naveen Jhajholia, Advocate  
for the appellants.

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NIDHI GUPTA, J.CM-14964-2012

This is an application under Section 5 of Limitation Act read with  
Section 151 CPC for condonation of delay of 2 days in filing the appeal.

After going through the contents of the application, which is  
supported by affidavit of the appellant No.1, the same is allowed subject to  
all just exceptions and delay of 2 days in filing the present appeal is condoned.

MAIN CASE

The plaintiffs No.3 and 4 are in second appeal against the  
concurrent judgments and decrees of the learned Courts below whereby suit  
for declaration and permanent injunction filed by the appellants, has been  
dismissed by both the Courts below.



2. Brief facts of the case are that the plaintiffs had filed the instant suit seeking declaration to the effect that the Agreement to Sell dated 20.07.2004 and subsequent Agreement to Sell dated 25.08.2004 regarding suit land measuring 69 kanal 11 marla as described in the plaint, is null, void and is liable to be cancelled and is not binding upon the rights of the plaintiffs; **and** permanent injunction restraining the defendants and their agents, etc. from alienating, mortgaging or transferring the suit property or changing the nature of the suit property in any manner.

3. It was the pleaded case of the appellants that they had entered into an Agreement to Sell dated 20.07.2004 with the defendants to buy land measuring 69 kanal 11 marla at the rate of Rs.12,50,000/- per acre. Pursuant thereto, plaintiffs had received an amount of Rs.6 lakh on 20.07.2004 from the defendants as earnest money. Date of execution of Sale Deed was fixed for on or before 02.01.2006. It was further settled that Sale Deed of 2 acres of land will be executed on or before 05.08.2004 out of suit land. It was pleaded that plaintiffs had come present in the Office of Sub-Registrar for execution of Sale Deed of 2 acres on 05.08.2004, but the defendants had failed to turn up. As such, the plaintiffs had got attested an affidavit dated 5.8.2004, regarding their presence from the office of Sub Registrar. Thereafter, the defendant got the Sale Deed executed from the plaintiff of one acre of land consisting of 8 kanals out of the suit land, vide registered sale deed dated 26.8.2004 and possession of the same i.e. 8 kanal



has been delivered to Bagga Singh, Sushil Kumar and Walait Singh and same was executed at the instance of defendants.

4. Thereafter, subsequent Agreement dated 25.08.2004 had been executed by plaintiffs in favour of the defendants regarding the suit land in which they had received Rs.14 lakh more as earnest money. As per Agreement dated 25.08.2004, it was settled that Sale Deed of 3 acre will be executed on or before 25.11.2004. However, the defendants had failed to execute the said Sale Deed as they had no ready money for execution of Sale Deed despite the fact that plaintiffs are very much present and had got Affidavit attested for marking their presence. Accordingly, it was alleged that as per the conditions of the agreement dated 20.7.2004 and 25.8.2004 defendants have failed to perform their part of contract and therefore earnest money has been forfeited and agreement to sell are liable to be canceled. The defendants have no right, title or interest in the suit land but they want to alienate the same. Hence present suit was filed on 01.12.2004.

5. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, the learned Civil Judge (Junior Division), Rajpura, had dismissed the suit of the plaintiffs with costs vide judgment and decree dated 12.02.2011. The Civil Appeal filed by the plaintiffs No.1, 3 and 4 was dismissed by the learned District Judge, Patiala vide judgment and decree dated 06.06.2012. Hence, present second appeal by the plaintiffs No.3 and 4.



6. It is inter alia submitted by learned counsel for the appellants that during the pendency of the suit, no suit for specific performance of agreements to sell dated 20.7.2004 and 25.8.2004 had been filed by the respondents No. 1 to 4. Bhalinder Singh DW-1 had also admitted in his cross-examination that no suit for specific performance has been filed by the respondents. As such, as per law and procedure the agreements in question had become time barred. However, now the appellants and proforma respondents have come to know that a suit for specific performance has been filed by the respondents No. 1 to 4 before learned lower court which is time barred. As such, impugned judgments and decrees passed by the learned courts below are against the law and facts and is liable to be set aside.

7. Learned counsel further submits that the appellants and proforma respondents No. 5 and 6 (now deceased) have recorded the statement of PW-1 Jagir Singh, PW-2 Gurdeep Singh and also placed on record the documents as Ex. P1, P2 and Mark-A, Mark-B, Mark-C, Mark-D, Mark-E but the learned courts below have ignored the same. The respondents No. 1 to 4 have prepared a forged and fabricated writing Ex. D-1 as the appellants proforma respondent No. 4 and Assa Singh had never put their signatures on Ex. D-1. The appellants and proforma respondent 5 and Assa Singh have proved their case and the agreements in question are time barred and are liable to be cancelled. As such, the judgements and decrees of both the learned courts below are liable to be set aside.



8. It is accordingly prayed that the present appeal be allowed, and the impugned judgments and decrees be set aside.

9. No other argument is raised on behalf of the appellants. I have heard learned counsel and perused the record in detail. I find no merit in the submissions advanced on behalf of the appellants.

10. Perusal of record of the case shows that the plaintiffs have miserably failed to prove their case. The most glaring lacuna in the case set up by the plaintiffs is that the plaintiffs have failed to tender into evidence even the original Agreements in question; and have also failed to tender into evidence other documents like the Affidavit and Sale Deed. The plaintiffs have only produced photostat copies of the said documents, which cannot be relied upon.

11. However, it is to be seen that the plaintiffs have admitted the Agreements dated 20.07.2004 Ex.P-1 and 25.08.2004 Ex.P-2. It has also been proven on record that pursuant to the above said Agreements, the plaintiffs have themselves registered the Sale Deed dated 26.08.2004 in favour of the defendant No.4 and others. Needless to say, once the Agreements have been acted upon and Sale Deeds have been executed, the said Agreements cannot be cancelled. In fact, it is also proven on record that in pursuance to the Agreements dated 20.07.2004 (Ex.P1) and 25.08.2004 (Ex.P2), four Sale Deeds were executed by the plaintiffs in favour of different persons. It was further proved that the parties had mutually agreed to get Sale Deed



executed qua different portions of land at different times. Furthermore, plaintiffs themselves have admitted that they had got the Sale Deed executed on 2-3 different occasions.

12. Moreover, the defendants further proved on record that vide Ex.D1 and Ex.D2, the plaintiffs had received money from them in lieu of the sale consideration till 2005. Contention of the appellants that signatures of the appellants were forged on the said documents remain unsubstantiated. Thus, is also proved that plaintiffs have received sale consideration. It was also proved that possession had been delivered to the defendants. Thus, said agreements have been duly acted upon. Therefore, the plaintiffs are estopped from seeking cancellation of the said agreements.

13. Furthermore, the defendants have produced copies of Jamabandi (Ex.D3 and Ex.D4), which were sanctioned after execution of Sale Deed dated 26.08.2004, as per which defendants are shown to be owners in possession of the part of the suit land. In cross-examination, plaintiffs have themselves admitted possession of the defendants over the suit property.

14. Relevant findings of the learned District Judge, Patiala in Para 9 of the judgment dated 06.06.2012 read as follows: -

*“9. Plaintiffs have admitted the agreement of sale Ex. P1 which is dated 20.7.2004 and Ex. P2 which is dated 25.8.2004. It is also an admitted fact that in pursuance thereof four sale deeds have been executed by plaintiffs in favour of different persons and they have received the sale consideration. Thus, the*



*agreement of sale Ex. P1 and Ex.P2 have been given effect. It is very much mentioned in sale deed Ex.P2 that the sale deed of remaining land shall be executed in favour of the purchasers i.e. defendants on 2.1.2006. However, the possession has been delivered to the defendants on 25.8.2004 and defendants were permitted to level the land to make roads and converted the same into plots. Therefore, plaintiffs are estopped from saying that the agreement to sell Ex. P2 in any way is illegal, null and void."*

15. It is no longer res Integra that this Court in second appeal has limited jurisdiction to interfere in the concurrent 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**, wherein it is held 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."*

16. In the present case, no such error or defect in procedure has been pointed out by learned Counsel for the appellant. Ld. Counsel for the appellants is unable to dispute or controvert the factual and legal position as noted above. As such, the present second appeal stands **dismissed**.

17. Pending application(s) if any also stand(s) disposed of.

23.02.2026  
Sunena

(Nidhi Gupta)  
Judge

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |