

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA-4099-2013(O&M)

Date of decision: 15.01.2026

Baldev Singh

...Appellant(s)

Vs.

Smt. Jasbir & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vinish Singla, Advocate
Mr. Ankit Kumar Sangwan, Advocate
for the appellant.

Mr. Rajinder Sharma, Advocate
for respondents No.1, 3 and 8.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent findings of the learned Courts below whereby suit filed by the appellant, for specific performance of Agreement to Sell dated 24.01.2001 (Ex.P1) has been partly decreed for alternative relief of recovery of Rs.50,000/- along with interest @ 12% per annum, from the date of filing suit.

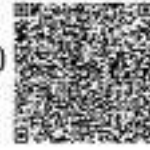
2. It was the pleaded case of the appellant in the plaint that as per Jamabandi for the year 1988-89, defendant No.1 Gursewak Singh had become owner of land measuring 13 kanal. Defendant No.1 had executed a registered Agreement to Sell dated 24.01.2001 registered on 25.01.2001 in



favour of the plaintiff/appellant for sale of land measuring 13 kanal. At the time of execution of Agreement, defendant No.1 had received Rs.25,000/- as earnest money. It was alleged that possession of the suit land had been delivered to the plaintiff at the spot. It was further alleged that despite the subsisting Agreement, defendant No.1 in collusion with defendant No.2 had sold the land measuring 21 kanal 11 marla including suit land to the defendants No.3 to 5 vide Sale Deed dated 14.02.2001. Accordingly, present suit was filed on 30.03.2001 seeking specific performance of the Agreement to Sell dated 24.01.2001.

3. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Tarn Taran had partly decreed the suit of the plaintiff vide judgment and decree dated 09.09.2010 in the following manner:-

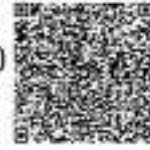
“26. In my above detailed discussion, it has been proved on file that defendants no.1 and 2 sold land in favour of defendants no.3 to 5 through Ex. D3 and defendants no. 3 to 5 are bona fide purchasers of land for valuable consideration. Court holds that defendant no.1 and 2, executed the sale deed 14.2.2001 Ex.D3 in favour of defendants no.3 & 4. However, as Ex. P1 is proved on file as per law of Evidence, so in the alternative plaintiff is entitled for specific performance of possession of other land of which defendant no.1 was owner in possession of 1/15 share of joint khata of land measuring 195 kanals 9 marlas as per Ex. P3 as per the terms of agreement to sell dated 24.1.2001 on payment of Rs. 1, 85,000/- per acre, total amount Rs. 3, 00, 625/-



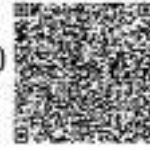
less Rs. 25,000/- already received by defendant no.1 as earnest/ advance money as mentioned in the jamabandi for the year 1998-99 Ex. P3. So, the suit of the plaintiff is partly decreed in respect of alternative other land of defendant no. 1, being 1/5 share measuring 9 Kanals 15 marlas out of land measuring 195 kanals 9 marlas as per existing share of defendant no.1 in Ex.P3 i.e. jamabandi for the year 1998-99. Remaining relief regarding injunction is declined. In the pecuniary circumstances, parties to bear their own costs. Separate decree sheet prepared and file be consigned to the record room.”

4. The Civil Appeal filed by the plaintiff was partly allowed by the learned Additional District Judge, Tarn Taran vide judgment and decree dated 14.01.2013, as follows:-

“18. In view of my findings on the above mentioned issues, there is no hesitation in saying that the relief part of judgment dated 9.9.2010 is not proper in the eyes of law and the same is set aside. Present appeal is accepted partly and resultantly the suit of the plaintiff is decreed partly, with costs, against legal representatives of defendant no. 1 (deceased) for the alternative relief of recovery of Rs. 50, 000/- alongwith interest at the rate of 12%per annum from the date of filing of suit, till decretal and future interest at the rate of 6% per annum from the date of decretal, till realization. Rest of the suit of the plaintiff is dismissed against defendant no. 1, while entire suit of plaintiff, is also dismissed against rest of the defendants. Decree sheet be prepared. Appeal file be consigned to the record room and record of the record room be returned.”



5. Hence, present Second Appeal by the plaintiff.
6. It is inter alia submitted by learned counsel for the appellant that the Agreement to Sell dated 24.01.2001 executed by defendant no.1 in favour of the appellant, was a registered Agreement. It is contended that therefore the said Agreement would have greater legal preference over the unregistered and ante-dated Agreement to Sell dated 13.11.2000 (Ex.D1) collusively executed by defendants No.1 and 2 in favour of the defendants No.3 to 5. Learned counsel relies upon Sections 18 and 58 of the Registration Act to submit that in terms of the said provisions, the registered Agreement dated 24.01.2001 in favour of the appellant would have precedence over the alleged unregistered Agreement in favour of the defendants No.3 to 5.
7. It is further submitted that the defendants No.3 to 5 had prior notice and knowledge of the registered Agreement to Sell dated 24.01.2001 as the same was a public document. As such, the defendants no.3 to 5 cannot be said to be bona fide purchasers of the suit property. It is argued that for the above reasons, the Sale Deed dated 14.02.2001 was an illegal and void document, and not binding on the rights of the plaintiff.
8. It is accordingly prayed that the present appeal be allowed, and suit of the plaintiff be decreed for specific performance; and the impugned judgments and decrees be set aside.
9. Per contra, learned counsel for the respondents No.3 to 5 vehemently opposes the submissions advanced on behalf of the appellant

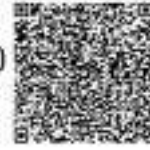


and submits that there are categoric findings of fact of both the Courts below holding that: a) both the Agreements to Sell have been proved; and b) respondents No.3 to 5 are bona fide purchasers of the suit property without notice. It is further clarified that it is unambiguously stipulated in Section 18 of the Registration Act that registration of an Agreement to Sell is “optional”. It is submitted that moreover, suit of the plaintiff has been partly decreed for refund of earnest money of Rs.25,000/- along with 100% damages thereupon. It is contended that therefore, the impugned judgments and decrees are just and fair, and do not suffer from any legal infirmity; and the present appeal deserves to be dismissed.

10. No other argument is made on behalf of the parties.

11. I have given my thoughtful consideration to the rival submissions advanced on behalf of both the parties. I find merit in the submissions advanced on behalf of the respondents.

12. A perusal of record of the case shows that defendant No.1 had filed written statement dated 23.07.2002, in which he had specifically denied the execution of Agreement to Sell dated 24.01.2001 in favour of the appellant. After filing of written statement, defendant No.1 was proceeded against ex parte. Similarly, defendant No.2 had also filed written statement specifically stating therein that he had no knowledge and notice of the Agreement to Sell dated 24.01.2001; and that the defendants No.1 and 2 had already agreed to sell the suit land to the defendants No.3 to 5

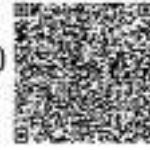


vide previously executed Agreement dated 13.11.2000. After filing of written statement, defendant No.2 was also proceeded against ex parte. It is also admitted fact on record that pursuant to the Agreement dated 13.11.2000, Sale Deed dated 14.2.2001 (Ex.D3) has been executed in favour of the defendants No.3 to 5.

13. Further, the plea of fraud and misrepresentation raised by the defendants No.1 and 2 against the plaintiff could not be proven. The plaintiff had proved the Agreement dated 24.1.2001 by examining PW3 Balbir Singh, witness of Ex.P1; and PW4 Jaspal Singh, Scribe of the Agreement dated 24.01.2001; and because the Agreement (Ex.P1) bears the photographs of both the plaintiff and the defendant No.1; and contained endorsement (Ex.P1/A); and because the Agreement (Ex.P1) was a registered document, the Courts below held that the execution and authenticity of the Ex.P1 was proved.

14. Further, although Agreement to Sell dated 13.11.2000 (Ex.D1) was not a registered document, yet the trial Court took note of the fact that the defendants No.1 and 2 had admitted in their written statement that they had executed Sale Deed dated 14.01.2001 (Ex.D3) in favour of the defendants No.3 to 5.

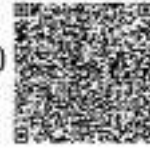
15. It is also relevant to note that the plaintiff had failed to prove his possession over the suit property. The plaintiff did not bring on record any evidence in the form of Jamabandis or Girdawaris to prove his



possession over the suit property. In fact, during the course of arguments, the learned counsel for the appellant has admitted that the defendants no.3 to 5 have been in possession of the suit property since 2001.

16. Keeping in view the above facts, the learned Courts below had concluded that as Agreement to Sell in favour of defendants No.3 to 5 was executed on 13.11.2000 and was prior in time to the Agreement to Sell executed in favour of the plaintiff on 24.01.2001, the former would have precedence over the latter. I find no error in the said reasoning. It is not denied or disputed by learned counsel for the appellant that both the Agreements stood proven before the learned Courts below. Argument of learned counsel for the appellant that the Agreement to Sell required registration, is de hors the provision of Section 18 of the Registration Act. Furthermore, even the argument that preference ought to be given to the registered Agreement dated 24.01.2001 in favour of the plaintiff, is liable to be rejected in view of the fact that admittedly, Sale Deed has been executed in favour of the defendants No.3 to 5. It is also not disputed that there are concurrent findings of fact that defendants No.3 to 5 are bona fide purchasers of the suit property without notice.

17. 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."



18. In view of the above-noted factual and legal position, no ground is made out to interfere in the impugned judgments and decrees of the Courts below. Present Second Appeal accordingly stands **dismissed**.
19. Pending application(s) if any also stand(s) disposed of.

15.01.2026
Sunena

(Nidhi Gupta)
Judge

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