



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226

RSA-6142-2014(O&M)

Date of decision: 09.03.2026

Sukhjinder Singh

...Appellant(s)

Vs.

Santosh Kaur & Others

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rakesh Kumar, Advocate
for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below whereby suit filed by the appellant for possession by way of specific performance of Agreement to Sell dated 24.08.2006 has been partly decreed holding the plaintiff entitled to recovery of earnest amount.

2. Brief facts of the case are that the appellant had filed Civil Suit for possession by way of specific performance of the agreement for sale dated 24.8.2006 executed by defendant No.5 and Manjit Singh deceased husband of defendant No.1 and father of defendants No.2 to 4 regarding land measuring 4 kanal 5 marla, out of land bearing Khewat/Kharauni 106/118 Khasra No.27//4/2/0-6, 7/5-8, 8/8-0, 9/8-0, 10/8- 0, being 1/7 share, which comes to



4K-5M situated in Village Mand Faridkot, Tehsil Bholath, District Kapurthala, as per Jamabandi for the year 2000-2001, along with all rights appurtenant thereto i.e. share in Bore, engine (Tube well), Khal, Aar, passage, for a total sale consideration of Rs.1,25,000 (less Rs.90,000/- paid as earnest money vide agreement for sale dated 24.8.2006 and Rs.5,000/- paid as additional earnest money on 22.2.2007.)

AND

In the alternative, suit for recovery of Rs.1,25,000/- along with interest @ 18% p.a. from the date of execution of the agreement for sale dated 24.8.2006 till actual realization of the decretal amount as detailed below:

Earnest money paid on 24.8.2006	Rs.90,000/-
Additional earnest money paid on 22.2.2007	Rs. 5,000/-
Damages	Rs.20,000/-
Total	Rs. 1,25,000/-

AND

Suit for permanent injunction restraining the defendants forever from alienating or transferring or creating any charge over the suit land mentioned above to any other person, except the plaintiff, illegally and forcibly in any manner whatsoever.

3. It was pleaded case of the appellant that Manjit Singh deceased/predecessor-in-interest of defendants No.1 to 4 and Piar Kaur/defendant No.5 were owners of the suit land. They had entered into Agreement to Sell dated 24.08.2006 with the plaintiff to sell the suit land to



the plaintiff for total sale consideration of Rs.1,25,000/-. The plaintiff had paid an amount of Rs.90,000/- by way of earnest money in cash at the time of execution of Agreement. Target date was set for 23.02.2007. On 22.02.2007, the date was extended to 24.04.2007; and plaintiff had paid an additional amount of Rs.5,000/- by way of earnest money. It was pleaded that on 24.04.2007, the plaintiff was present in the Tehsil Office, but Manjit Singh and Piar Kaur did not turn up. Upon hearing of the demise of Manjit Singh, the plaintiff had served legal notice dated 21.07.2007 upon his LRs/defendants No.1 to 4 calling upon them to execute Sale Deed on 08.08.2007. On 08.08.2007 again defendants did not turn up rather threatened to alienate the suit property. Hence, present suit was filed on 25.09.2007.

4. Upon appraisal of pleadings and oral & documentary evidence adduced by the parties, learned Additional Civil Judge (Senior Division), Kapurthala partly decreed of the suit of the plaintiff as follows: -

“26. In the light of said discussion, observations and findings on the issues, the suit of the plaintiff succeeds partly and stands decreed with costs to the effect that the plaintiff is entitled to recover a sum of Rs.95,000/- alongwith 9% p.a. simple interest w.e.f. 25.8.2006, till its realization in full and final from defendant No.5 and defendants No.1 to 4 (to the extent to which they have inherited the estate of deceased Manjit Singh) jointly as well as severally. Un-exhibited documents be returned to the parties, under the rules. Decree-sheet be prepared and file be consigned to the Judicial Record Room.”



5. Against the same, the plaintiff had filed Civil Appeal which was dismissed by the learned Additional District Judge, Kapurthala vide judgment and decree dated 16.04.2014. Hence, present second appeal by the plaintiff.

6. It is inter alia submitted by learned counsel for the appellant that the learned Courts below were in patent error in not granting specific performance of the Agreement to Sell as they failed to appreciate that the plaintiff had duly proved the Agreement to Sell dated 24.08.2006 by leading sufficient and cogent evidence by examining as many as four witnesses. On the other hand, the defendants have failed to prove their contention that the said transaction was a loan transaction. Yet the learned Courts below have considered the Agreement to Sell as documents of security to loan as per the stand of the defendants. However, the said finding is given without any pleading or evidence to this effect having been raised by the defendants neither in the written statement and without any evidence in this regard.

7. It is reiterated that both the courts below have considered the agreement to sell as a document of security to loan, as per the stand of the defendants/respondents, without any pleadings or evidence, as in the written statement no such plea has been raised, that, what was the loan amount, and on what date the same was taken by Manjit Singh, and what expenses occurred on the treatment of the Manjit Singh. No such evidence has been placed on record by the defendant. Thus, both the courts below have delivered



the findings, beyond the issue framed in the suit, and thus the findings returned by the Ld. Courts below are liable to be set-aside.

8. It is submitted that as a matter of fact Manjit Singh had taken treatment from the military Hospital, where no treatment charges are received. But both the courts have believed the concocted version of the defendants. Thus, the findings returned by the courts below are liable to be set-aside, and the appellant is the entitled for the main relief of specific performance by way of possession of the land and the appellant is ready to pay the remaining amount of sale consideration.

9. Ld. Counsel further argues that both the courts have wrongly delivered the findings that the above said land is the only piece of the land of the defendants. It is submitted that no such contentions have been raised in the written statement and even no such issue was framed, and no such evidence was led. It is still further submitted that the courts have further held that the sale of the land will cause hardship to the defendants, but no such points has been raised in the written statement, and no such issue has been framed. It is contended that therefore the findings of both the courts are based on conjecture and surmises and also on the basis of speculation, and are not based on evidence led on file, and are liable to be set-aside.

10. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees of the learned Courts below be set aside.



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

12. Perusal of record of the case shows that the execution of the Agreement in question and the endorsement in question has been duly proved. However, the question before the Courts below was whether the Agreement to Sell was entered into between the plaintiff and the deceased Manjit Singh and defendant No.5 Piar Kaur on account of intention to Sell/purchase the suit land; or was the Agreement in question executed only to secure some loan transaction. Plaintiff while appearing as PW1 has deposed that Manjit Singh had retired from the Army and was agriculturist and was not doing any other work. PW2 marginal witness in cross-examination has deposed on similar lines and has additionally stated that Manjit Singh was ill and later on he died. The said fact has been confirmed by PW3 Baljit Kaur marginal witness, who has also affirmed that Manjit Singh was ill at the time. PW3 has in fact further stated that Manjit Singh was in need of money for treatment and his mother was also under treatment. From the above statements of the plaintiff witnesses themselves, the learned Courts below have correctly inferred that the transaction was in fact a loan transaction and was not entered into with the purpose or intent to sell/purchase the suit land. It is my clear view that it is the duty of the Court to lift the veil and to discern the truth of the matter.



13. This above inference/finding is buttressed from the fact that it is proven fact on record that plaintiff has not taken possession of the suit property on the date of execution of Agreement. The plaintiff has been unable to give any explanation as to why despite payment of Rs.95,000/- out of total sale consideration of Rs.1,25,000/-, the plaintiff had not taken possession of the suit property. This can only mean that the recital in the Agreement to this effect was not in consonance with the actual and factual position.

14. The plaintiff has also been unable to explain as to why the defendants had agreed to sell the suit property for meagre amount of Rs.1,25,000/-; when, at the relevant time, the market value of the suit property was more than Rs.20 lakh per acre. From the above facts, it is proved that the amount of Rs.95,000/- had been taken by Manjit Singh for treatment. Accordingly, plaintiff had been held entitled to recovery of the said amount.

15. To recapitulate, execution of the Agreement to Sell dated 24.08.2006 (Ex.P1) although stood proved from the testimony of PW1 plaintiff; PW2 and PW3 Baljit Kaur marginal witness; and PW4 Mukesh Kumar, Scribe; however, PW2 and PW3 have admitted in their cross-examination that at the relevant time, Manjit Singh was ill; whereafter he had died. PW2 and PW3 have further stated that Manjit Singh was an agriculturist and was not doing anything else and that his family was dependent upon him; that Manjit Singh was in possession of 2 kanal 2.5 marla of land; that the loan was taken in lieu of treatment. PW1/plaintiff has been unable to deny that Manjit Singh was



dependent on agriculture and pension. Moreover, possession of Manjit Singh over suit land is evident from Jamabandi (Ex.P7).

16. Moreover, if plea of the appellant that possession of the suit land was delivered to the appellant at the time of execution of Agreement to Sell is to be accepted, then as per Section 17 of the Registration Act, 1908, the Agreement was required to be compulsorily registered. Admittedly that has not been done.

17. Thus, in view of the above undisputed facts and findings on record, I find no ground is made out to interfere in the concurrent judgments and decrees of the learned Courts below. Moreover, 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**, 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, present Second Appeal stands **dismissed**.
19. Pending application(s) if any also stand(s) disposed of.

09.03.2026
Sunena

(Nidhi Gupta)
Judge

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