

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****101+334****RSA-768-2017 (O&M)****Date of decision: 19.03.2026****Bimla****...Appellant(s)****Vs.****Goldie****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

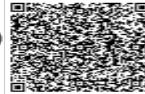
Present:- Ms. Rishma Verma, Advocate
for the appellant.

Mr. Nikhil Chopra, Advocate,
Ms. Trishanjali, Advocate and
Mr. Jatin Verma, Advocate
for the respondent.

NIDHI GUPTA, J.

Present Second Appeal has been filed by the defendant against the concurrent judgments and decrees of the learned District Courts; whereby suit filed by the plaintiff, for possession by way of specific performance of Agreement to Sell dated 25.05.2011, has been decreed by both the District Courts for specific performance.

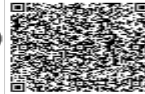
2. Brief facts of the case are that the plaintiff had filed instant suit for grant of decree of possession by way of specific performance of Agreement to Sell dated 25.05.2011 with regard to the suit house as described in the head note of the plaint; **and** for grant of decree of permanent injunction restraining the defendant from alienating, transferring or creating any charge over the suit property; **and** in the



alternative, decree for recovery of Rs. 3 lacs on account of double of earnest money i.e. Rs.1 lac + Rs.2 lacs Special Damages due to hike price in the house with interest thereupon.

3. It was pleaded in the plaint that defendant is owner of suit house as described in the plaint. Defendant had entered into Agreement to Sell dated 25.05.2011 with the plaintiff regarding sale of the said house for total sale consideration of Rs.4,50,000/-. Defendant had received earnest money of Rs.50,000/- from the plaintiff in the presence of marginal witnesses. Target date for execution of the Sale Deed was set for 25.07.2011. The said date by mutual consent extended thrice and finally target date was agreed to be set as 22.08.2012. Plaintiff remained present in the office of Sub-Registrar, Jalandhar alongwith balance sale consideration but the defendant did not turn up to register Sale Deed or to receive balance amount. The defendant had finally refused to perform her part of contract despite request of the plaintiff. Rather defendant threatened to alienate the house to some other person at higher rates. Hence, present suit was filed on 12.09.2012.

4. Upon notice, defendant had resisted the suit by filing written statement by denying the Agreement in question and stating that the same was a forged and fabricated document prepared by the plaintiff to grab the property of the defendant. It was further averred that defendant was in urgent need of Rs.50,000/- for which she had approached the plaintiff; and at the time of giving Rs.50,000/- to the defendant, plaintiff had got signature of the defendant and her son namely Rajesh Kumar on



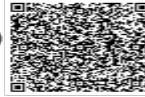
blank papers as security. Defendant had further averred that at the same time, she had given original papers of the suit house to the plaintiff. In the written statement Defendant had admitted that she was owner of the suit property however, denied that she has ever executed Agreement to Sell or ever received any earnest money from the plaintiff. Accordingly, dismissal of the suit was prayed for.

5. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Jalandhar had decreed the suit of the plaintiff vide judgment and decree dated 22.07.2014 in the following manner: -

“14. In view of my findings on the above said issues, the suit filed by the plaintiff succeeds and is decreed with costs for possession by way of specific performance of agreement to sell dated 25.05.2011 executed by defendant in favor of plaintiff. Plaintiff is directed to deposit the remaining sale consideration within a period of one month from today and thereafter defendant is directed to execute the sale deed in favor of plaintiff within a period of three months. Decree sheet be prepared. File be consigned to Record Room.”

6. The Civil Appeal filed by the defendant was dismissed with costs by the learned Additional District Judge, Jalandhar vide judgment and decree dated 09.08.2016. Hence, the present second Appeal by the defendant.

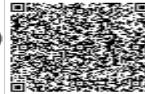
7. It is *inter alia* submitted by learned counsel for the appellant that suit of the plaintiff was not maintainable as plaintiff failed to prove that defendant was owner of the suit property. It is submitted that in



terms of Section 17 of the Specific Relief Act, it was incumbent upon the plaintiff to prove title of the appellant over the suit property. It is contended that in view of the fact that ownership of the appellant is not proved, therefore, suit of the plaintiff was not maintainable.

8. It is further submitted that learned District Courts below have failed to appreciate that the appellant is an uneducated woman and had only borrowed Rs.50,000/- from the plaintiff, and in good faith, has given all documents pertaining to the suit property to the plaintiff; and in good faith had also affixed her signatures upon the blank papers as desired by the plaintiff. It is submitted that the said documents have been misused by the plaintiff to create instant Agreement to Sell; which is therefore result of fraud, misrepresentation et cetera and, are therefore, not sustained.

9. It is further submitted that learned District Courts have failed to appreciate that Agreement in question cannot be said to be executed in terms of provision of Punjab Stamp Rules, 1934 as applicable to Punjab in view of the fact that present Agreement to Sell Ex.P1, does not bear the signatures of the appellant on the back side. From this it is not clear as to who purchased the stamp paper. Thus, as identity of purchaser of stamp paper has not been indicated on the back side of the stamp paper, where stamps have been affixed, is in violation of Rule 28(xiii) of the Punjab Stamp Rules, 1934. Even the Register of Stamp Vendor; wherein corresponding entries would have been made and attested by the purchaser, have not been proved. It is not even properly stamped and,



therefore, it is not admissible in evidence. In the present case, as the Agreement to Sell was unregistered and was not having proper stamp duty, therefore, it is not admissible without paying stamp duty. Clearly therefore, Agreement to Sell dated 25.05.2011 (Ex.P1) is shrouded in suspicious circumstances.

10. Furthermore, Agreement in question was not scribed by any Deed Writer. Moreover, Agreement has also not been proved as the attesting witness PW2 Satgur Dyal, is the husband of the plaintiff, and Dharam Pal second attesting witness has not been examined.

11. Last but not the least, plaintiff has failed to prove her readiness and willingness to perform the contract. It is accordingly prayed that the present appeal be allowed and the impugned judgments and decrees of the learned District Courts be set aside.

12. *Per contra*, learned counsel for the respondent opposes submissions made on behalf of the appellant and submits that argument of the appellant that plaintiff has failed to prove her ownership over the suit property, it totally misplaced as the appellant herself in her written statement has admitted that she is owner of the suit property. In view of the said admission, no proof was called for or required from the plaintiff.

13. In regard to the submissions of the appellant regarding the insufficiency of the stamp duty, learned counsel for the respondent takes resort of Section 36 of the Indian Stamp Act 1899 to submit that as per said provision, once the document is admitted in evidence, its admissibility cannot be questioned at any subsequent stage of the same



suit on the ground that it was not properly stamped. It is submitted that in the present case, no such argument has been raised by the appellant at any stage, prior to the present Appeal. Moreover, insufficiency of the stamp duty is between the Government and the plaintiff and cannot be agitated upon the appellant. Even an oral Agreement is valid, if proved and acted upon.

14. In support, learned counsel for the respondent refers to a judgment passed by a Coordinate Bench of this Court in **Preetjot Kaur & Anr. Vs. Hardeep Singh & Anr., 2025(2) CIVIL COURT CASES 498 (P&H);** wherein it is held as under: -

“(i) Stamp Act, 1899, S.36 Deficient stamp duty Impounding of document Photostat copy of a document cannot be impounded, as only original document can be impounded.

(ii) Stamp Act, 1899, S.36 Deficient stamp duty - Impounding of document Document tendered in evidence and exhibited No objection raised by defendants at the time of exhibiting the document S.36 of the Act debars Court from calling in question any instrument which has been admitted in evidence on account of deficiency in stamp duty Application for impounding the document rightly dismissed.”

The relevant paras of the said judgment are as under:-

“5. In the present case, admittedly, a photostat copy of the agreement to sell is on the record before the Civil Court which is apparent from a perusal of the impugned order dated 01.09.2018. The Trial Court has rightly held that the original of the agreement to sell can be impounded and a photocopy cannot be impounded. It is an admitted case that the original document is lying attached in a file titled as 'State V/s



Hardeep Singh'. Learned counsel for defendants No.1 and 2-petitioners is not able to dispute the fact that the original document is lying in the file of the criminal case and only a photostat copy is available on the file before the Civil Court. The judgment relied upon by the learned counsel for defendants No.1 and 2- petitioners in the case of Kasireddy Satyanarayana (supra) would have no applicability in the present case as the same deals with the reconstruction of a document which is lost after having been submitted in Court.

6. A Coordinate Bench of this Court in the case of Sandeep Kumar (supra), while dealing with Section 36 of the Indian Stamp Act. 1899 has held that Section 36 debars the Court from calling in question any instrument, which has been admitted in evidence, on account of deficiency in stamp duty. Admittedly, the document stands tendered as evidence and had also been exhibited. On a query by the Court as to whether any objection was raised by defendants No.1 and 2-petitioners at the time of exhibiting the document, learned counsel for defendants No.1 and 2-petitioners states that no such objection was raised when the document was exhibited.”

15. Similar view has been taken in **Sandeep Kumar v. Chandigarh Overseas Pvt. Ltd, (Punjab and Haryana) : Law Finder Doc Id # 2313169;** wherein it is held as under: -

“Indian Stamp Act, 1899 Section 36 Suit for specific performance of the agreement to sell Plaintiff was directed to pay the deficient stamp duty alongwith a penalty equivalent to 10 times of the actual stamp duty-Section 36 debars the court from calling in question, any instrument, which has been admitted in evidence on account of deficiency in the

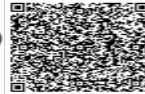


stamp duty-In any case, it is not mandatory that the deficiency in stamp duty must be recovered alongwith penalty equivalent to 10 times of the actual stamp duty Order set aside.”

16. Learned counsel for the respondent further relies upon the following judgments: -

1. **Gaddipati Divija v. Pathuri Samrajyam (SC) : Law Finder Doc Id # 2197161;**
2. **Mahi Pal v. Baldev Singh (P&H) : Law Finder Doc Id # 1616911;**
3. **Swaranjit Singh v. Jatinder Kumar, (Punjab And Haryana) : Law Finder Doc Id # 1950929;**
4. **Surjit Singh v. Nanak Singh, (P&H) : Law Finder Doc Id # 161086;**
5. **Madan Lal v. Om Parkash (Punjab and Haryana) : Law Finder Doc Id # 604194 ;**
6. **Bachittar Singh v. Sukhdev Singh, (Punjab And Haryana) : Law Finder Doc Id # 2459531;**
7. **Balwinder Singh v. Sham Lal, (Punjab and Haryana) : Law Finder Doc Id # 864952;**
8. **Mangta Singh v. Mohinder Singh, (Punjab and Haryana) : Law Finder Doc Id # 833670; and**
9. **Gurmeet v. Piara Singh, (P&H) : Law Finder Doc Id # 978949.**

17. As regards readiness and willingness, Id. Counsel for the respondent submits that the very fact that the appellant is raising plea of readiness and willingness, indicates that she is admitting the Agreement

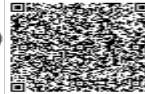


to Sell. Furthermore, the very fact that the appellant has stated that signatures of the appellant and her son were taken by the plaintiff on blank papers, would mean that appellant is admitting her signatures on the Agreement to Sell. In any event, readiness and willingness of the plaintiff is proved from her Affidavit of Appearance Ex.P14 before the Sub Registrar on the target date of 22.08.2012. It is pointed out that at page 265 of the LCR, in the said Affidavit of Attendance dated 22.08.2012 Ex.P14, plaintiff has categorically mentioned that balance sale consideration is available with her; which has not been rebutted by the appellant.

18. Lastly, it is submitted by learned counsel for the respondent that the present Appeal in any case, has been rendered infructuous in view of the fact that pursuant to the impugned judgments and decrees of the learned District Courts, Sale Deed has already been executed; and it is only due to exparte stay of execution proceedings granted by the Predecessor Bench of this Court vide order dated 11.12.2017 that possession has not been delivered. He accordingly prays for dismissal of the present Appeal.

19. No other argument is raised on behalf of the parties. I have heard learned counsel and perused the case file alongwith Lower Court Record in minute detail. I find no merit in the submissions advanced on behalf of learned counsel for the appellant.

20. Contention of the appellant that plaintiff had failed to prove title of the appellant over the suit property, is entirely misconceived in

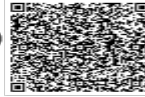


view of the admitted fact that in her written statement, appellant has duly admitted that she is owner in possession of the suit property. In the face of this admission, no evidence to this effect was required to be led by the plaintiff. As the appellant in her written statement, has not disputed and has not raised dispute with regard to her ownership over the suit property, no evidence to this effect was required to be led by the plaintiff.

21. Needless to say, it is settled position in law that admission is the best evidence. In the present case, in view of the admission of the appellant, no further evidence was needed to prove the factum of ownership of the appellant. As per Section 58 of the Evidence Act, admission is the best evidence. The Hon'ble Supreme Court in **Divisional Manager, United India Insurance Co. Ltd. & anr. vs. Samir Chandra Chaudhary (SC) Law Finder Doc Id # 83537**, has held that an "*admission of fact is good evidence*" against the person admitting the same unless it is legally explained away to be made under a bona fide mistake. That is not so in the present case.

22. The Hon'ble Supreme Court in **Union of India vs. Moksh Builders and Financiers Ltd and others Law Finder Doc Id # 105456** has held that "*admissions duly proved are admissible evidence irrespective of whether that party making them appeared in the witness box or not.*"

23. Further in **Hub Lal Singh (D) represented by LR's and Another vs. Sheo Balak Singh and others, 2014 (10), RCR (Civil), 1573, Law Finder Doc Id # 470026** Allahabad High Court has held that "*An admission has been considered to be best evidence for the reason that section 58 of the*



Evidence Act, 1872 states that the fact admitted need not be proved. An admission in pleading means admission of an averment by the opposite parties. However, party making admission cannot take advantage of it, and on the contrary, the party in whose favour it is made, may get its benefit."

24. Reliance may also be placed upon judgment of the Hon'ble Supreme Court in **Vathsala Manickavasagam v. N. Ganesan (SC) 2013(4) RCR (Civil) 22, , Law Finder Doc Id # 461299** wherein it is held as under:-

*"24. As far as the principle to be applied in Section 17 is concerned, the Section as it reads is an admission, which constitutes a substantial piece of evidence, which can be relied upon for proving the veracity of the facts, incorporated therein. When once, the admission as noted in a statement either oral or documentary is found, then the whole onus would shift to the party who made such an admission and it will become an imperative duty on such party to explain it. In the absence of any satisfactory explanation, it will have to be presumed to be true. It is needless to state that an admission in order to be complete and to have the value and effect referred to therein, should be clear, certain and definite, without any ambiguity, vagueness or confusion. In this context, it will be worthwhile to refer to a decision of this Court in **Union of India v. Moksh Builders and Financiers Ltd. and others, AIR 1977 Supreme Court 409** wherein it is held as under :*

*"It has been held by this Court in **Bharat Singh v. Bhagirath [1966] 1 SCR 606** that an admission is substantive evidence of the fact admitted, and that admissions duly proved are "admissible evidence irrespective of whether the party making them appeared in the witness box or not and whether that party when appearing as witness was confronted with those statements in case it made a statement contrary to those admissions." In taking this view this Court has*



*noticed the decision in **Ajodhya Prasad Bhargava v. Bhawani Shanker**, AIR 1957 Allahabad 1 (FB) also."*

25. The Hon'ble Supreme Court in **Mritunjoy Sett v. Jadunath Basak (D)** by Lrs. (SC) 2011 AIR SC (Civil) 1418, has held as under:-

"16. In the light of Respondent's own admission, it leaves no doubt in our mind that it will hold good as long as it was not withdrawn or clarified by him. It is too well settled that an admission made in a court of law is a valid and relevant piece of evidence to be used in other legal proceedings. Since an admission originates (either orally or in written form) from the person against whom it is sought to be produced, it is the best possible form of evidence. In the factual context of this case, it may also be noted here that the 'rent receipts' issued by Smt. Kamala Sett, the predecessor-in-interest of the Appellant herein, being the documentary evidence adduced by the Respondent to prove his contention that the tenancy was as per the Bengali Calendar, was never substantiated by the witness' testimony of the above-named Smt. Sett in the course of hearings."

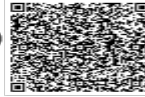
26. Appellant has further contended that the plaintiff had failed to prove Agreement in question as the plaintiff had failed to examine the attesting witnesses. However, the said contention of the appellant is factually incorrect as the plaintiff herself had appeared as PW1 and proved her case. Plaintiff had further proved the Agreement in question from the evidence of marginal witnesses PW2 and PW3. PW2 Pawan marginal witness has deposed that Agreement to Sell dated 25.05.2011 was executed in his presence at the instance of the defendant; and that



the earnest money was also received by the defendant in his presence. Merely because PW2 has stated that Agreement was not written in his presence, would not mean that Agreement was not executed. PW3 has stated that defendant had even signed Endorsement whereby date for specific performance was extended. It is wrong for the appellant to plead that she is illiterate as she has affixed her signatures upon the Agreement in Hindi. Further, as rightly pointed out by learned counsel for the respondent, the very fact that the plaintiff has raised argument of readiness and willingness of the plaintiff to perform the contract, would imply that she is admitting Agreement to Sell. The said admission is sufficient. In this situation, mere non-examination of Scribe would not imply that Agreement is not executed.

27. In this regard, it is also necessary to appreciate that defendant has admitted receiving an amount of Rs.50,000/- from the plaintiff. Plea of the defendant is that this was a loan transaction and was not by way of earnest money. However, defendant has failed to prove any loan transaction whatsoever. Clearly, therefore, the said amount was received by the defendant by way of earnest money towards the Agreement.

28. Further, only bald statement has been made by the defendant that Agreement to Sell is a forged and fabricated document without substantiating the same by way of any concrete evidence. Defendant has not examined any other witness, who can say that she has



not executed Agreement to Sell Ex. P1 in favour of the plaintiff rather she has admitted receiving an amount of Rs.50,000/-.

29. Last but not the least, the appellant has herself admitted in her written statement that at the time of execution, she had handed over original documents of the suit house to the plaintiff. Needless to say, if transaction was mere a loan transaction, then why did the appellant hand over the original documents of the suit property to the plaintiff. As noted above, PW3 has proved that appellant has signed on the endorsement for extension of time. No explanation has been given by the appellant as to why the dates were extended for execution and registration of sale deed, if the present was a mere loan transaction.

30. Appellant has further urged that her signatures were obtained by the plaintiff on blank papers. Needless to say, once the plaintiff had succeeded in proving Agreement in question, the onus was shifted upon the defendant to prove that her signatures were obtained by the plaintiff on blank papers. However, appellant has failed to lead any evidence whatsoever in this regard. Rather, appellant has taken contradictory pleas in this respect as, in the written statement, defendant has categorically stated that her signatures were taken on blank papers; however in her cross-examination, DW1 defendant and DW2 Rajesh Kumar, son of the defendant, have both stated that they never signed any document. Therefore, even if plea of the defendant that they have never signed the document is assumed to be correct, then onus was upon them to prove that Agreement in question does not bear their signatures.



However, on a Court query, appellant has admitted that no Handwriting Expert was examined by the appellant to prove her said assertion.

31. Relevant findings of the learned Additional District Judge, Jalandhar are contained in para 29 of the judgment dated 09.08.2016, which read as under: -

“29. So from the above said discussion, it is clear that respondent had proved the execution and consideration of Ex.P1. Moreover, appellant had not denied the fact that she had not received Rs.50,000/- from the respondent. Similarly, appellant had not denied her signatures on Ex.P1. Learned counsel for the appellant stated that it was a money transaction and appellant had not executed any agreement to sell in favour of the respondent, but appellant failed to prove the same, whereas respondent had proved the execution and consideration of Ex.P1. Moreover, appellant admitted in para No.2 on merit in the written statement that she had handed over original documents in Urdu, site plan, SC certificate to the respondent/ plaintiff. So appellant failed to prove that if it was a money transaction, then why she handed over original documents to respondent. So from the above said discussion, it is clear that findings of learned lower court on issues No.1 to 3 are based on the pleadings of the parties as well as evidence available on the record, so same are affirmed. Similarly findings of learned lower on issues No.4 to 6 are based on the pleadings of the parties as well as evidence on the record, so same are affirmed. So from the perusal of judgment passed by learned lower court, it is clear that learned lower court had passed a well reasoned judgment and there is no illegality or infirmity in the judgment passed by learned lower Court.”



32. Even otherwise, present Second appeal is liable to be dismissed on the short ground that this Court in Regular Second Appeal has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. The Hon'ble Supreme Court in ***M/s. Shivali Enterprises v. Godawari (Deceased) (SC): Law Finder Doc Id # 2034559*** has held that no matter howsoever incorrect or grossly erroneous the concurrent findings of the learned courts below may be, this Court in the Second Appeal can interfere in the concurrent findings only where there is an error in law or procedure. In the present case, no such error in law and procedure has been made out by learned counsel for the appellants.

33. The Hon'ble Supreme Court in case of ***"Mst. Sugani vs. Rameshwar Das and another"*** Law Finder Doc Id# 123580, has gone on to further hold that *"the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers in second appeal"*. Again, in ***Avtar Singh Vs. Bimla Devi and others, 2021(4) RCR (Civil) 402*** Hon'ble Apex Court has held that finding of fact cannot be interfered with in exercise of second Appellate jurisdiction.

34. Last, but not the least, learned counsel for the appellant has not disputed that in pursuance concurrent judgments and decrees of the learned courts below, the respondent/plaintiff had filed Execution Petition no.469 of 2014. In the execution proceedings, the Executing Court ordered for execution/registration of sale deed in respect of agreement to sell dated

25.05.2011; and on 28.11.2017, the sale deed was executed in favour of the respondent in pursuance to the order passed by the Ld. Executing Court. Thus, once the sale deed has been executed in favour of the respondent, nothing survives in the present case. The appellant has not mentioned the factum of execution of the sale deed to this Court.

35. Ld. Counsel for the appellant is unable to dispute or controvert the above said facts and findings.

36. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.

37. Pending applications, if any, stand disposed of.

19.03.2026

Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No