**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****125****RSA-8-2025(O&M)****Date of decision: 02.04.2026****Kulwant Singh****...Appellant(s)****Vs.****Lakhbir Singh and others****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr.A.P.Kaushal, Advocate for  
Mr. Paras Talwar, Advocate  
for the appellant.

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**NIDHI GUPTA, J.**

Present Second Appeal has been filed by the defendant No.1 against the concurrent judgments and decrees of the Id. District Courts; whereby suit filed by the plaintiffs/respondents No. 1 and 2, for possession by way of specific performance of Agreement to Sell dated 12.10.2012; **or** in the alternative, suit for recovery of Rs.20 lacs; was decreed by the learned Trial Court for recovery of Rs.20 lacs; and in appeal by the first Appellate Court for amount of Rs.7 lacs alongwith simple interest of 6% per annum from the date of filing of suit upto recovery of the same.

2. It was the pleaded case of the plaintiffs that defendant No.1 is shareholder to the extent of 11K 6 M (suit land) out of total land measuring 98K 9 M. On 12.10.2012, defendant No.1 had agreed to sell suit land to the plaintiffs for total sale consideration of Rs.52 lacs. Plaintiffs



had paid Rs.7 lacs in cash to defendant No.1 as an advance sale consideration. Agreement to Sell was signed and thumb marked by defendant No.1 and witnessed by headmen of the village and also signed by Lakhbir Singh, one of the plaintiffs. As per the terms and conditions of the said Agreement to Sell dated 12.10.2012, Sale Deed was to be executed on or before 15.06.2013 after receiving balance sale consideration. It was further stipulated in the Agreement that in case of default of defendant No.1 due to which sale deed could not be executed, defendant No.1 will pay Rs.20 lacs as damages and even then, he shall be bound to perform his part of the contract. It was further pleaded that it was agreed that defendant No.1 shall clear the encumbrance upon the suit land before the execution of Sale Deed. Plaintiffs had further averred that on 15.06.2013, which was a Saturday, plaintiff had approached defendant No.1 at his residence and tendered balance sale consideration of Rs.40 lacs and requested the defendant to execute the Sale Deed. On 17.06.2013, plaintiff had again approached defendant No.1 and requested him to come to the office of Sub Registrar. It was averred that defendant No.1 had agreed and told the plaintiff to reach Tehsil office. Accordingly, plaintiff had reached Tehsil office with sufficient amount for the execution of Sale Deed. It was alleged that plaintiffs had waited for defendant No.1 till evening but the defendant No.1 did not turn up. Accordingly, plaintiff Gurwinder Singh got marked his presence by executing Affidavit of Attendance showing his willingness and readiness to complete the contract. After 17.06.2013, the plaintiffs were informed by defendant No.2



that defendant No.1 has entered into Agreement to Sell dated 06.07.2007 for the suit land in favour of defendant No.2 and defendant No.2 had filed a suit for grant of specific performance against defendant No.1. Later on, it had also come to light that defendant No.3, who is close relative of defendant No.1, had alleged that defendant No.1 had agreed to sell the suit land to defendant No.3 vide Agreement to Sell dated 21.05.2007. It was alleged that Agreements to Sell dated 06.07.2007 and 21.05.2007 are forged, fabricated and ante dated Agreements executed by defendant No.1 to harm the interest of the plaintiffs in respect of the suit land. It was further stated that defendant No.3 has obtained a decree of possession of suit land from Additional Civil Judge (Senior Division), Tarn Taran vide judgment and decree dated 11.12.2013. However, the plaintiffs were not the party of the said judgment and decree. Therefore, the same is not binding upon the plaintiffs. It is contended that plaintiffs are still ready and willing to perform their part of contract. Accordingly, plaintiffs had requested defendant No.1 to execute Sale Deed in their favour or in the alternative, pay Rs.20 lacs as interest to the plaintiffs. But the defendant No.1 had refused to do so. Hence, present suit was filed on 26.08.2014.

3. Upon appraisal of the pleadings and the evidence led by the parties, the Civil Judge (Senior Division), Tarn Taran had partly decreed the suit of the plaintiffs with costs vide judgment and decree dated 18.05.2023 for recovery of Rs.20 lacs from defendant No.1; and suit against defendants No.2 and 3 was dismissed. The Civil Appeal filed by the



defendant No.1 was partly accepted by the District Judge, Tarn Taran vide judgment and decree dated 06.09.2024 as follows: -

*“28. Consequent upon my discussion on the evidence led by the parties in the trial court, the impugned judgment being perverse and far from the pleadings as well as evidence coming on record qua recovery of Rs.20,00,000/- would not be legally sustainable and is accordingly order to be set aside. The suit of the plaintiffs-respondents is ordered to be decreed for recovery of only an amount of Rs.7 lakhs, alongwith simple interest of 6% per annum, from the date of filing of the suit up to the recovery of the same. Resultantly, the appeal stands partly allowed with costs.”*

4. Hence, present second appeal by defendant No.1.

5. The only argument raised on behalf of the appellant to assail the judgment and decree of the learned First Appellate Court is that it is an admitted fact on record that as per the Agreement in question, plaintiffs were required to pay an amount of Rs.13 lacs to defendant No.1 being condition precedent. It is submitted that it was the plaintiffs themselves who had breached the condition precedent by not making payment of Rs.13 lacs on 05.11.2012. Therefore, Agreement dated 12.10.2012 was breached by them. Accordingly, appellant could not have been directed to pay Rs.7 lacs to the plaintiffs as contract was breached by the plaintiffs themselves.

6. It is further submitted by learned counsel for the appellant that in fact the Appellant had never received any such amount of Rs. 7 Lakhs in cash as part of sale consideration as alleged by Respondents 1

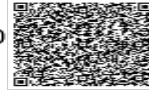


and 2. Moreover, the plaintiffs even failed to prove on record or bring any sort of evidence to prove the advance payment of Rs. 7 lakh to the Appellant on 12.10.2012 nor proved their Account Statements or ITRs for the year 2012 to show their capacity to pay Rs. 7 lakh in cash to the Appellant for purchasing the land in question.

7. It is further submitted that in fact, the said agreement has not been proved on the judicial file by the Respondents 1 & 2; and as per Section 61 of the Indian Evidence Act/Section 56 of Bharatiya Sakshya Adhinyam, the writer of the documents has to depose about the truthiness of the contents of the document, which has not been produced by the Respondents 1 & 2 in their evidence below. Further, the scribe of the said document has not been examined by Respondents No.1 & 2. As such the said document is without any independent corroboration.

8. It is further submitted that conduct of the plaintiffs is not trustworthy. A bare perusal of the testimony shows their clear intent to mislead the District Courts.

9. Learned counsel for the appellant reiterates that the Ld. Appellate Court while appreciating the evidence on record rightly observed the admitted facts regarding non-payment of Rs. 13 Lacs by the Plaintiffs on 05.11.2012 to the appellant-defendant no. 1 being a condition precedent, which was breached by the plaintiffs themselves. In that case, the plaintiffs who themselves breached upon a condition precedent by non-payment of Rs. 13 Lacs on 05.11.2012 which vitiates the alleged



contact/agreement 12.10.2012. Hence, the plaintiffs in no case are entitled to recover the amount of Rs.7 lakh if paid to the appellants.

10. It is further submitted by learned counsel for the appellant that however, Ld. Appellate Court while appreciating other facts regarding the frivolous demands of recovery of money by Respondents 1 & 2 has rightly set aside the findings of the trial Court qua recovery of Rs. 20 Lakhs being legally unsustainable but has still erred in passing its judgment/decreed dated 06.09.2024 ordering for recovery of Rs. 7 Lakhs alongwith simple interest of 6% per annum from the date of filing of the suit as the respondents 1 & 2 could still not prove the payment of Rs. 7 Lakhs made to the Appellant as part of sale consideration.

11. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of District Courts be set aside.

12. No other argument is raised by learned counsel for the appellant. I have heard Ld. counsel and perused the case filed in detail. I find no merit in the submissions advanced on behalf of the appellant.

13. A perusal of the record of the case shows that plaintiffs have succeeded in proving the Agreement to Sell dated 12.10.2012 from the evidence of attesting witness PW2, Lakhwinder Singh. PW2 has further deposed that the said Agreement was written in the Tehsil complex, Patti at the instance of the appellant.

14. PW4 Resham Singh, Scribe had proved the fact that Agreement was got typed by him from his junior at the instance of the party.



15. PW3 Tara Singh has proved presence of the plaintiffs before the Sub Registrar on 17.06.2013. PW5 Registration Clerk has proved the Affidavit of Attendance Ex.P2 entered at Sr. No. 69. Plaintiffs had further produced statements of accounts Ex.P4, Ex.P10 and Ex.P12 to prove their financial capacity, thereby proving their readiness and willingness to perform the contract.

16. PW6 Handwriting and Fingerprint Expert has submitted his report Ex.PW6/A regarding the comparison of signature of defendant No.1 on Agreement to Sell dated 12.10.2012 Ex.P1 and admitted signature taken in Court. PW6 has reported in his report Ex.PW6/A that signatures are of defendant No.1.

17. From the above evidence and findings, it was proved that defendant No1. had entered into an Agreement to Sell with the plaintiffs. It was also proved that Plaintiffs were ready and willing to perform their part of contract. However, Trial Court decreed suit only for recovery of ₹20 lakhs in view of the facts recorded in its judgment dated 18.05.2023 as follows: -

*“..... Even, Learned Counsel for the plaintiffs himself also only press for the alternative relief of recovery of Rs.20 lacs. It is proved that it is written in the agreement that Kulwant Singh was agreed that in case he would not execute the sale deed he would give Rs.20 lacs as compensation. So, from the evidence discussed above, the plaintiffs are not entitled for relief of specific performance, but they are entitled for recovery of Rs.20 lacs. ....”*



18. Accordingly, suit of the plaintiff came to be decreed for alternative relief of recovery of ₹20 lakhs vide judgment and decree dated 18.05.2023, passed by learned Civil Judge (Senior Division), Tarn Taran.

19. As the alternative relief had been granted to the plaintiffs on their own prayer, no cross appeal had been preferred by the plaintiffs. As such, grievance of defendant No.1 in the Civil Appeal was confined to the fact that learned Trial Court had decreed the suit for recovery of Rs.20 lacs.

20. The record reveals that the learned First Appellate Court has upheld the findings of the learned Trial Court to the extent that Agreement in question Ex.P1 stood proved; and that the signatures and thumb marks of the defendant No.1 were also proved by the marginal witnesses as well as handwriting expert.

21. Contention of the appellant is that the learned first Appellate Court was an error in decreeing suit of the plaintiff for recovery of ₹7 lakhs as, as per the record, Rs.13 lacs was to be paid by the plaintiff to the appellant on 05.11.2012. It has been argued that as the said amount was not paid by the plaintiffs, they could not have been held entitled to recovery of Rs.7 lacs. I am not in agreement with the said contentions of the appellant as it is an admitted fact on record that an amount of Rs.7 lacs had been paid by the plaintiffs to the appellant on 12.10.2012.

The relevant findings of First Appellate Court are contained in para 23 of the judgment dated 06.09.2024, which read as under: -





*“23. In this regard, it is observed that it has remained undisputed and rather admitted in so many words by the plaintiffs-respondents that they had paid only ₹7,00,000/- at the time of execution of the agreement to sell in question. The plaintiffs-respondents have not made any reference to the stipulation regarding payment of ₹13 lakhs out of the balance sale consideration on 5th of November 2012 in their pleadings. However, this condition has clearly been mentioned in the agreement to sell in question. As such it was incumbent upon the plaintiffs-respondents to establish on record that they had performed all the stipulations of the agreement to sell in question on their part, but there is no denial to the fact that after having paid ₹7 lakhs on the date of execution of the agreement to sell, the next installment of ₹13 lakhs was not paid by the plaintiffs-respondents on 5th of November 2012. Apparently, therefore at the first instance, the breach if any of the terms and conditions of the agreement to sell has occurred on behalf of the plaintiffs-respondents. The next stipulation is that after having received ₹13 lakhs on 5th of November 2012 against a receipt, the remaining amount of the total sale consideration of ₹52 lakhs was to be paid on 15th of June 2013 and defendant No.1 would execute and get registered the sale deed in favour of the plaintiffs-respondents. The next stipulation is that if the vendor fails to execute and get registered the sale deed in question in favour of the plaintiffs-respondents, then he would be liable to pay ₹20 lakhs, which he received as earnest money/partial sale consideration, alongwith damages to the tune of ₹20 lakhs and in total, he would be liable to pay ₹40 lakhs to the plaintiffs-respondents. It was further agreed that even after payment of the aforesaid amount of ₹40 lakhs, the vendor would still be entitled to get*



*the sale deed executed and registered through the process of Court and it was further agreed that if the remaining amount is not paid timely for getting the sale deed registered, then earnest money would stand forfeited. Apparently, the plaintiffs-respondents had failed to pay an amount of ₹13 lakhs on or before 5th of November 2012 and, therefore, in the considered opinion of this Court, once they themselves have breached a condition precedent for the performance of the remaining part of the agreement to sell, then in no manner, they can be held to be entitled to recover an amount of ₹20 lakhs, alongwith damages to the same tune, totalling ₹40 lakhs from the appellant-defendant No.1.”*

22. Consequentially, as it was admitted fact on record that plaintiffs had paid an amount of Rs.7 lacs by way of earnest money, learned First Appellate Court had decreed the suit of the plaintiffs for recovery of the said amount.

23. Contention of the appellant/defendant No.1 that due to breach of contract by the plaintiffs *in-as-much* as due to the fact that plaintiffs had failed to pay the next installment of Rs.13 lacs by 05.11.2012, appellant is entitled to damages, is not tenable. Despite repeated Court queries Learned counsel for the appellant has not been able to show any such clause in the Agreement in question that appellant/defendant shall be entitled to damages in case of breach of contract by the plaintiffs.

24. Learned counsel for the appellant is unable to dispute or controvert the above said facts and findings.

25. In view of the above, no ground is made out to interfere in the concurrent judgments and decrees, and findings of fact of the learned Courts below. The present Second Appeal stands **dismissed**.
26. Pending applications, if any, stand disposed of.

02.04.2026

Divyanshi

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No

(NIDHI GUPTA)

JUDGE