

**S. No.141****IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH************RSA No.52 of 2026
Date of Decision:20.01.2026****Prakash****.....Appellant****Vs.****Rajbir (since deceased) through his LRs****.....Respondents****CORAM:- HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR****Present:- Mr. Ravinder Rana, Advocate for the appellant.************Yashvir Singh Rathor, J. (Oral)**

1. The present appeal has been directed against the concurrent judgments and decrees of the learned trial Court and learned Appellate Court dated 21.01.2023 and 03.10.2025 respectively, whereby suit preferred by defendant for specific performance of the agreement has been decreed and a decree for specific performance of the agreement dated 05.03.2014 has been passed in favour of plaintiff and defendant has been directed to execute the sale deed in favour of plaintiff within a period of three months on receipt of balance sale consideration.

2. Case of plaintiff is that defendant being owner in possession of agricultural land measuring 1 Kanal 08 Marlas detailed in the plaint, agreed to sell the same in favour of plaintiff vide agreement dated 05.03.2014 for a total sale



consideration of Rs.5 lakhs out of which a sum of Rs.4,06,000/- was paid as earnest money at the time of execution of the agreement. The sale deed was to be executed upto 04.09.2014, on payment of balance sale consideration and on the said date, plaintiff remained present in the Office of Sub Registrar, Jhajjar with the balance sale consideration and other incidental charges for execution of the sale deed and got his presence recorded by getting the affidavit executed. However, defendant did not turn up. Plaintiff requested him several times to execute the sale deed but of no help. It is further submitted that plaintiff has always been ready and is still ready and willing to perform his part of the contract and since defendant failed to execute the same, legal notice dated 23.09.2014 was issued to him but of no help which necessitated the filing of present suit.

3. Upon notice, defendant appeared and filed his written statement and denied execution of any agreement dated 05.03.2014 and receipt of earnest money. It was submitted that the agreement in question has been fraudulently procured by plaintiff and he has concealed true facts. Infact, the parties to the suit had entered into an agreement for sale of the land on 07.02.2013 and sale deed was to be executed on 06.02.2014. However, plaintiff could not get the sale deed executed as per terms of the agreement and he sought extension of time of the agreement dated 07.02.2013 and entry in respect of execution of agreement dated 07.02.2013 is duly recorded in the register of the deed writer which had been duly thumb marked by the parties to the suit as well as witnesses. Receiving of payment of Rs.04,06,000/- has also been denied. It was further pleaded that plaintiff has concealed the previous agreement dated 07.02.2013 and execution of



the previous agreement is also not mentioned in the agreement dated 05.03.2014 relied upon by the plaintiff which creates doubt regarding execution of the said agreement. There is also no writing in respect of adjustment of the amount already paid by the plaintiff against the previous agreement and a prayer was made for dismissal of the suit.

4. From the pleading of the parties, following issues were framed:-

- “1. Whether the plaintiff is entitled for decree for specific performance as averred in the plaint?OPP
2. Whether the suit of the plaintiff is not maintainable in the present form?OPD
3. Whether the plaintiff is estopped from filing the present suit by his own act and conduct?OPD
4. Whether the plaintiff has no locus-standi and no cause of action to file the present suit?OPD
5. Whether the plaintiff has concealed the material facts from the court?OPD
6. Whether the agreement to sell has been fraudulently procured by the plaintiff?OPD
7. Relief.”

5. Thereafter, plaintiff himself has died and his wife Suman has stepped into the witness box as PW1 and examined other witnesses i.e., Hemraj as PW2, V.B. Kashyap, Handwriting and Finger Print Expert as PW3 and Swaroop Singh Yadav as PW4 and has relied upon following documents:-



- Ex.P1 Copy of agreement dated 05.03.2014
- Ex.P2 Copy of letter dated 04.09.2014
- Ex.P3 Copy of affidavit of Rajbir
- Ex.PW3/B Report of handwriting and finger print expert.
- Ex.PW3/C & Ex.PW3/D Thumb impression
- Ex.P4 Copy of jamabandi for the year 2007-08
- Ex.P5 Copy of mutation No.1364
- Ex.P6 Copy of legal notice
- Ex.P7 Postal Receipt

6. Defendant himself stepped into witness box as DW1 and has also examined DW2 Parkash Chander Dhankar (Deed Writer) and has led in evidence copy of register of deed writer Ex.D1.

7. After hearing the parties, learned trial Court decided Issues No.1, 5 and 6 in favour of plaintiff and held that the defendant had executed the agreement in question and received the earnest money and that he is entitled to get the sale deed executed on payment of balance consideration. Issues No.2 and 4 were also decided against defendant and suit was held to be maintainable and that plaintiff had the cause of action and locus standi to file the present suit. Issue No.3 was also decided against defendant No.3 as not pressed and the suit was decreed.

8. Feeling aggrieved, defendant filed appeal before the Appellate Court which has been dismissed by Additional District Judge, Jhajjar vide judgment and decree dated 03.10.2025.



9. Feeling aggrieved, present second appeal has been preferred. Learned counsel for appellant has been heard and the material on file has been perused.

10. Learned counsel for the appellant argued that impugned judgments and decrees are based on conjectures and surmises. The pleading of parties and material on file have not been appreciated in the correct perspective which has resulted in miscarriage of justice. Learned counsel contended that no agreement dated 05.03.2014 was executed by the defendant and infact agreement dated 07.02.2013 was executed and plaintiff had sought extension of time and the present agreement has been fraudulently obtained. In the agreement relied upon by the plaintiff, there is no mention of the previous agreement dated 07.02.2013 and previous agreement has also been concealed in the plaint which is a sufficient ground to non-suit the plaintiff and learned counsel prayed that appeal in hand is thus liable to be accepted.

11. However, I do not find any force in the contentions raised by learned counsel for the appellant and appeal in hand is liable to be dismissed for the reasons discussed hereinafter.

12. Plaintiff in order to prove the agreement to sell dated 05.03.2014 has examined PW2 Hemraj who is an attesting witness of the agreement, PW3 V.B. Kashyap, Handwriting and Finger Print Expert and PW4 Swaroop Singh Yadav, Deed Writer. Plaintiff himself had died and his wife Suman has stepped into the witness box as PW1. PW4 Swaroop Singh has categorically deposed that the agreement Ex.P1 dated 05.03.2014 was scribed by him and he had made entry regarding the same in his register and the agreement Ex.P1 was read over and



explained to the parties and the witnesses and thereafter, they had appended their thumb impressions/ signatures over the same. PW2 Hemraj is an attesting witness of the said agreement and he has also deposed that defendant had agreed to sell the suit property to the plaintiff for a sale consideration of Rs.5 lakhs vide agreement dated 05.03.2014 which was scribed by Swaroop Singh, Deed Writer, (PW4) and the same was read over to the parties and thereafter, parties had appended their signatures/ thumb impressions and he had also attested the same. He further stated that deed writer had made an entry in respect of the agreement in his register and parties and witnesses had signed the said entry in the register as well. Besides this, plaintiff has also examined PW3 V.B. Kashyap, Handwriting and Finger Print Expert as PW3 who proved his report Ex.PW3/B along with photographs Ex.PW3/C to Ex.PW3/F and deposed that he had examined the disputed thumb impressions on the agreement Ex.P1, Q1 and Q2 stated to be of defendant with his specimen thumb impressions S1 and S2 on the specimen sheet obtained in the Court on 03.10.2022 and as per his opinion, the disputed thumb impressions are identical with the specimen thumb impressions of defendant and have been affixed by one and the same person. As such, plaintiff had discharged his share of burden by examining the afore-said witnesses.

13. Defendant has taken a plea that the agreement was got executed fraudulently and onus was thus upon defendant to establish the plea of fraud taken by him unlike a criminal charge and he was to explain as to under what circumstances, he had executed the agreement dated 05.03.2014 in favour of plaintiff and how the fraud was played upon him. When defendant appeared in



the witness box as DW1, he admitted that he had come to Tehsil Complex Jhajjar on 05.03.2014 along with Rajbir and Hemraj. He further stated that the writing was executed by Swaroop Singh Deed Writer (PW4) and that he had appended his thumb impressions in the presence of Swaroop Singh Deed Writer and Hemraj had appended his signatures and Rajbir had appended his thumb impressions. He further stated that he had appended his thumb impressions of his own sweet will and without any pressure. In this manner, defendant admitted his thumb impressions on the agreement Ex.P1 but no evidence has been led by him as to in what manner the fraud was played upon him. Rather, he stated that he had appended the thumb impressions of his own sweet will and without any pressure and in these circumstances, there is no reason to discard the testimony of the scribe and the attesting witness, who both have stated that the agreement was scribed by PW4 and thereafter, it was read over and explained to the parties to the suit and witnesses and thereafter, parties and witnesses had appended their signatures/ thumb impressions on the same. As such, both the Courts below have also given a concurrent finding that defendant had executed the agreement dated 05.03.2014 (Ex.P1) vide which he agreed to sell the suit property in favour of the plaintiff.

14. Merely because, some agreement was executed earlier on 07.02.2013 as alleged by defendant is no ground to non-suit the plaintiff. Once fresh agreement was executed, the previous agreement shall be deemed to have been waived or rescinded by the parties. There was also thus no requirement to mention about the execution of the previous agreement in the subsequent



agreement executed on 05.03.2014. Defendant has thus failed to prove the allegations of fraud by leading cogent and convincing evidence. It is well settled that allegations of fraud have to be proved unlike a criminal charge and suspicion, howsoever strong, cannot take place of proof. Particulars of fraud are not only required to be pleaded but same have also to be proved by leading cogent and convincing evidence which is missing in the present case. Rather, he has admitted that he had appended the thumb impressions on the writing executed by the scribe of his own sweet will and without any pressure which demolishes his plea of fraud.

15. Plaintiff has also led in evidence the affidavit dated 04.09.2014 Ex.P3 which was got executed before Executing Magistrate which shows that the plaintiff remained present before Sub Registrar on the date fixed for execution of the sale deed but defendant did not turn up. Thereafter, legal notice dated 23.09.2014 (Ex.P6) was also sent to the defendant by the plaintiff through his counsel calling upon him to execute the sale deed and after the defendant failed to execute the sale deed, the suit in hand was instituted well within limitation which shows that plaintiff has always been ready and willing to perform his part of the agreement. Since defendant has taken a plea of fraud which he failed to prove, it can be assumed that he had not appeared before the Sub Registrar on the date fixed for execution of the agreement which shows that he was not ready and willing to perform his part of the contract. Both the Courts below thus have appreciated the facts of the case and evidence in the correct perspective and findings do not suffer from any infirmity or irregularity and there is thus no reason



to take a contrary view. Moreover, it is well settled that in regular second appeal, this Court has limited jurisdiction to interfere in the concurrent findings of facts returned by the learned Courts below. Hon'ble Supreme Court in Law Finder Doc Id # 2034559 - *M/s. Shivali Enterprises v. Godawari (Deceased) (SC)*; ; has 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.”

(Emphasis added)

16. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below and the present Regular Second Appeal is hereby dismissed.

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

(Yashvir Singh Rathor)
Judge

January 20, 2026
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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No