



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2402-2022 (O&M)

Reserved on :-22.08.2025

Date of Pronouncement:-27.08.2025

Ahmed Ali Khan Through his LR

... Appellant

Versus

Mohd. Razak and Others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIRINDER AGGARWAL

Argued by :-

Mr. Anil Kumar Garg, Advocate and
Mr. Aashish Paul, Advocate
for the appellant.

Mr. Rakesh Gupta, Advocate along with
Ms. Jaseen, Advocate and
Ms. Nishtha, Advocate
for the respondent No.1/Caveator.

VIRINDER AGGARWAL, J.

1. Respondent No.1/plaintiff filed suit for possession by way of specific performance of agreement to sell and in the alternative for recovery with consequential relief of permanent prohibitory injunction with regard to land measuring 208 square yards out of suit land fully detailed and described in the head note of the plaint on the basis of agreement to sell dated 16.06.2009 executed by Ahmad Ali Khan appellant/defendant, who has filed the appeal through his LRs.



2. As per the plaint, defendants have executed two sale deeds out of the land agreed to be sold and sale deed of 208 square yards fully detailed and described in the head of the plaint was not executed, so suit was filed. Defendants contested on the allegations that suit is not maintainable, plaintiff has concealed material facts, agreement to sell in question is result of fraud, coercion, misrepresentation and is null-&-void as no consideration passed from the plaintiff to defendant. On facts, it was pleaded that no consideration amount of ₹50,00,000/- was ever paid to the plaintiff, in fact a civil suit No.36 of 16.01.2008 decided on 06.06.2009 titled a Mohamad Sadiq vs. Ahmad Ali Khan was pending in the Court of learned Additional Civil (Senior Division), Malerkotla on the basis of agreement to sell dated 02.02.2006 wherein plaintiff of that suit could not arrange the sale consideration and agreement dated 02.02.2006 was cancelled in August, 2007. Mohamad Sadiq, plaintiff of that suit is brother of respondent/plaintiff of the present suit and he informed his partner Saraj Din-defendant No.5 of that suit that he can purchase the suit land on the basis of earnest money of the share of Mohamad Sadiq and agreement dated 02.02.2006 would be cancelled and defendant No.5 could enter a fresh agreement to sell, proposal was accepted by Saraj Din and agreement dated 02.02.2006 was cancelled, matter was compromised between Mohamad Sadiq and answering defendants and suit was dismissed. It was denied that any agreement was executed with the respondent/plaintiff or sale consideration of ₹50,00,000/- has been passed from the respondent/plaintiff to the appellant/defendant and was alleged that agreement is result of misrepresentation and are null-&-void and is without any consideration. Sale deeds were also alleged to be result of



misrepresentation and are null-&-void without consideration, result of fraud having no effect on the right of the defendants and prayed for dismissal of the suit.

3. Replication was filed by the plaintiff reiterating the contents of the plaint and denying the averments of the written statement. From the pleading of the parties following issues were framed which are as under as:-
framed:-

1. Whether the plaintiff is entitled for the specific performance of agreement to sell dated 16.06.2009 as prayed for? OPP
2. Whether the plaintiff is entitled for the alternative relief of realizing of ₹5,84,161/- from the defendant as prayed for? OPP
3. Whether the plaintiff is entitled for the permanent injunction in present suit? OPP
4. Whether the plaintiff is always ready and willing to perform his part of agreement to sell dated 16.06.2009? OPP
5. Whether the agreement to sell dated 16.06.2009 is null and void as result of fraud, coercion? OPD
6. Whether the present suit is not maintainable? OPD
7. Whether the plaintiff is not come to the court with clean hand and suppressed the material fact from the court? OPD
8. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD
9. Relief

4. On affording opportunities to both the parties, they led their respective evidence. Arguments were heard and learned Civil Judge (Junior Division), Malkerkotla, decreed the suit of the respondent/plaintiff.



5. Aggrieved by the judgment and decree so passed, appeal was filed before learned Additional District Judge, Sangrur and learned Additional District Judge, Sangrur dismissed the appeal and upheld the judgment and decree passed by the learned Civil Judge (Junior Division), Malerkotla.

5. Aggrieved by the concurring judgments by the learned Courts below, present appeal has been filed and notice was served upon respondent/plaintiff, who appeared through counsel, records of learned Courts were requisitioned.

6. I have considered the submissions made by learned counsel for both the parties, but this Court finds the arguments of learned counsel for the appellant/defendant devoid of merit.

7. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab and Haryana, second appeals preferred are to be treated as appeals under Section 41 of the Punjab Courts Act, 1918 and not under Section 100 CPC. Reference in this regard can be made to the judgment of the Supreme Court in the case of ***Pankajakshi (Dead) through LRs and others V/s Chandrika and others, (2016)6 SCC 157***, followed by the judgments in the case of ***Kirodi (since deceased) through his LR V/s Ram Parkash and others, (2019) 11 SCC 317 and Satender and others V/s Saroj and others, 2022(12) Scale 92***. Relying upon the law laid down in the aforesaid judgments, no question of law is required to be framed.

8. Learned counsel for the appellant/defendant assailed the judgments and decrees passed by the Courts below only on the sole ground that there is alteration in agreement to sell as date of the agreement has been



changed from 06.06.2009 to **16.06.2009** by inserting “**No.1**” before the date “**6**” in the agreement and that suit to which was barred by limitation has been shown to be within limitation by extending date of execution of the agreement from 06.06.2009 to **16.06.2009**. Learned counsel for the appellant argued that the learned Courts below has not taken care of the fact that appellant/defendant has examined ‘Handwriting and Finger Print Expert’, who has submitted his report after thoroughly examining the agreement to sell and has opined that there is insertion of “**No.1 before No.6**” in the date, making the date “**16**” from the original date “**6**” and the present suit was filed on 14.06.2012 and in case the agreement was of 06.06.2009 then by 14.06.2012 that suit was barred by limitation as period of three years has elapsed by the time suit was filed as suit could have been filed upto 05.06.2012.

9. Learned counsel for the respondent/plaintiff argued that there no illegality, infirmity in the findings recorded by the learned Courts below. Learned Courts below has thoroughly examined the pleadings and evidence on record and has reached on correct conclusion. In the written statement, appellant/defendant has nowhere taken the plea that there is material alteration in the date of agreement and appellant/defendant sought to amend the written statement but that amendment was not allowed by the Court of learned Civil Judge and that order has attained finality, so there is no plea on record that there is any material alteration in agreement to sell. It was further held by the learned Additional District Judge that in the agreement to sell, there is no date fixed for performance of the contract and in such cases, the limitation starts from the date when specific performance of the agreement is



refused. He has further held that two sale deeds of the part of the land, which was agreed to be sold vide agreement in question were executed on 07.07.2009 and only the sale-deed qua the suit land, which is part of the land agreed to be sold was not executed, so the limitation would be taken from the 07.07.2009 and suit is well within the period of limitation.

10. Perusal of the record shows that initially appellant/defendant has nowhere pleaded that there is any material alteration in the agreement to sell or that date of the agreement to sell have been changed from 06.06.2009 to **16.06.2009**, when defendant led his entire evidence, thereafter he moved an application before learned Civil Judge to amend the written statement and to plead this fact. Learned Civil Judge rightly declined the application on the ground that application is highly belated and defendant has already closed his evidence on 07.07.2017 and furthermore the original defendant was dead by that time and he was represented through his LRs at the time of moving of the application. So during his lifetime, appellant/defendant has nowhere moved any application for amendment of the plaint and to raise this plea that there is material alteration in the agreement to sell, so the learned Court below has rightly declined the application.

11. When there is no pleading to this fact that there is any material alteration in the agreement to sell, the evidence led by appellant/defendant, which is beyond pleadings has rightly been discarded by the Courts below and further the reasoning of the Courts below that in the present case when no date was stipulated for performance of the agreement to sell and performance of the agreement to sell was contingent upon happening of an event then the limitation would start only from the date when happening of



that event was intimated by the appellant/defendant to the respondent/plaintiff and the learned Courts below has rightly concluded that when appellant-defendant has performed part of the agreement to sell and has executed two sale deeds with regard to the land, which was agreed to be sold vide the agreement in question, then the limitation would start from the date of those sale deed i.e. 07.07.2009 as on that date it would be deemed that appellant/defendant has refused to perform his remaining part of the contract and limitation would start running from that period. If that is taken, then the suit was well within the limitation and the learned Court has come to a plausible conclusion.

12. Furthermore the testimony of Gulam Hussain, who is legal heir of deceased-appellant and has appeared on behalf of the appellant to support the case of defendant after death of defendant, clearly shows that he has failed to substantiate the case of the appellant as in cross-examination he admitted that his father has sold the entire land of ownership except the suit land. He has admitted that the agreement to sell between his father and plaintiff was got executed by above-stated Mohamad Ashraf. He has further admitted in the cross-examination that the entire sale consideration of the agreement to sell was handed over by plaintiff to his father at their home. He has stated that he has produced the copy of agreement to sell dated 06.06.2009 in the Court, but no such copy has been produced on record. So he has admitted in cross-examination that his father has executed the agreement to sell and has received the sale consideration and there is no pleading to the effect that agreement to sell has material alteration. The attempt to take such plea by way of amendment of written statement was



rightly declined by the learned Civil Judge as the attempt was made to amend the written statement after entire evidence was led by the defendant.

13. In the light of entire pleadings and evidence on record, I find there is no illegality or infirmity in the concurrent finding recorded by the Courts below. This Court finds no merit in the appeal and the appeal is consequently dismissed and the judgment and decree passed by learned Additional District Judge, Sangrur is hereby affirmed.

14. Since the main case has been decided, pending miscellaneous application(s), if any, stands also disposed of.

27.08.2025
Gaurav Sorot

(VIRINDER AGGARWAL)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No