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

**RSA No.2994 of 2010 (O&M)  
Date of Decision : 03.04.2025**

Rahman (since deceased) through LRs .....Appellant

Versus

Rajjak and another .....Respondents

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Amit Jain, Advocate  
for the appellant.

Mr. Sanjay Vij, Advocate  
for the respondents.

**PANKAJ JAIN, J.(Oral)**

Plaintiff is in second appeal.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the appellant as the plaintiff and the respondents as the defendants.

3. Plaintiff filed suit for specific performance. As per plaintiff, defendant No.1 agreed to sell his property as described in the plaint in his favour vide agreement to sell dated 25.07.1996. Earnest money of Rs. 50,000/- was paid. Rs.40,000/- was to be adjusted against the sale consideration as part of the land was under mortgage with defendant No.2. Balance sale consideration of Rs.5,000/- was to be paid before the Sub-Registrar at the time of execution of the sale deed, which was to be executed



on or before 07.04.1996. As per the plaintiff, he always remained ready and willing to perform his part of the contract but defendant No.1 failed to perform his part. Defendant No.1 executed sale deed on 20.09.1996, 03.10.1997 and 16.01.1997 in favour of defendant No.2. Plaintiff claims that defendant No.2 was in the knowledge of agreement to sell, executed by defendant No.1 in favour of the plaintiff, as he had played active role in the execution of the agreement. However, defendants colluded with each other in order to defeat the rights of the plaintiff.

4. Defendant No.1 having failed to appear before the Courts, was proceeded against *ex parte*.

5. Defendant No.2 filed written statement denying the claim of the plaintiff. Defendant No.2 claimed that the agreement to sell dated 25.07.1996 propounded by the plaintiff, was nothing but a result of collusion between the plaintiff and defendant No.1 with an intention to defeat the rights of defendant No.2. Defendant No.2 made *bona fide* inquiries regarding title of defendant No.1 and purchased the property for a valuable consideration. Readiness and willingness of the plaintiff was disputed. It was denied by defendant No.2 that he played any role at the time of execution of the agreement to sell, propounded by the plaintiff. Knowledge of any such agreement to sell was denied.

6. On the basis of pleadings of the parties, following issues were framed:



- “1. Whether agreement to sell dt. 25.7.96 is valid and binding ?  
OPP
2. Whether the plaintiff has been ready and willing throughout to perform his part of contract? OPP
3. Whether the plaintiff is estopped from filing the present suit by his own act, conduct etc ? OPD
4. Whether the suit is not maintainable? OPD
5. Relief.”

7. Plaintiff in order to prove agreement to sell in his favour, examined scribe as PW2 and attesting witness Dalsher as PW3. Both of them supported the case of the plaintiff. Trial Court after analysing the entire evidence found that plaintiff and defendant No.1 are closely related. Defendant No.1 is brother-in-law of the plaintiff. Trial Court further found that the three sale deeds executed by defendant No.1 in favour of defendant No.2 were from the period commencing from 20.09.1996 till 03.10.1997, yet plaintiff preferred to file suit only after execution of the three sale deeds. The plaintiff as well as defendant No.1 belong to Tehsil Punhana. Even the witnesses belong to Tehsil Punhana, yet agreement in favour of the plaintiff was executed 50 Kms. away from Tehsil Punhana in Tehsil Ferozepur Jhirka. Trial Court thus found that the agreement to sell as well as the suit filed by the plaintiff, was nothing but a ploy at the hands of the plaintiff working in cahoots with defendant No.1 to defeat the rights of defendant No.2. Deciding issues No.1 and 2 against the plaintiff, the Trial Court dismissed the suit.



8. The aforesaid findings stand affirmed by the Lower Appellate Court.

9. Ld. Counsel for the appellant while assailing the findings recorded by the Courts below submits that the execution of agreement to sell was proved from the testimony of scribe (PW2) and attesting witness (PW3). The relationship between the plaintiff and defendant No.1 has been made sole basis to dislodge the case of the plaintiff/appellant, whereas the fact is that respondent No.2 Hashmal is also related to defendant No.1 Rajjak. The relationship between the parties ought not have been given undue importance to non suit the plaintiff. Once the plaintiff was able to prove agreement to sell in his favour, the Courts below ought to have decreed the suit filed by the plaintiff.

10. I have heard counsel for the parties and have carefully gone through records of the case.

11. The relationship between the plaintiff and defendant No.1 is admitted. Plaintiff while appearing as PW4 admitted in his cross-examination that his wife Nijri is real sister of Rajjak (defendant No.1). Lower Appellate Court after re-appreciating the evidence has also highlighted the contradictory versions of the witnesses regarding payment of earnest money. There is a serious contradiction regarding purchase of stamp-paper. The plaintiff and the scribe have given different versions. Thumb-impressions alleged to be that of Hashmal on agreement Exhibit P3, are badly smudged. The suit was filed by the plaintiff seeking specific



performance of agreement to sell, dated 25.07.1996 on 16.10.1998 only after the three sale deeds have been executed by the plaintiff in favour of defendant No.2 on 20.09.1996, 03.07.1997 and 16.01.1997.

12. From the facts and circumstances of the case, this Court finds that the Courts below rightly found that the present *lis* was designed by plaintiff as well as defendant No.1 to dislodge the sale deeds executed by plaintiff in favour of defendant No.2. No exception can be taken to the findings recorded by the Courts below.

13. In view of above, finding no merit in the instant appeal, the same is ordered to be dismissed.

14. Pending application(s), if any, shall also stand disposed off.

**April 03, 2025**

**Dpr**

**(Pankaj Jain)**

**Judge**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No