



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

120

1. ESA-4-2020 (O&M)
Date of decision: 01.04.2025

KANWAR SINGH

..Appellant

Versus

BALJEET AND ANR

..Respondents

2. ESA-5-2020 (O&M)

KANWAR SINGH

..Appellant

Versus

RAJESHWAR AND ANR

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Kanwal Goyal, Advocate
Ms. Sheena Dahiya, Advocate
for the appellant.

Mr. Sandeep Kumar Yadav, Advocate
for respondent No.1.

ANIL KSHETARPAL, J(Oral)

1. With the consent of learned counsel for the parties, two connected execution second appeals shall stand disposed of by this common order.

2. The facts are being noticed from ESA-4-2020.

3. Sh. Bagdawat Singh was owner of the property. He agreed to sell the same to the appellant Sh. Kanwar Singh on 20.07.2006 by execution of a written agreement to sell. Subsequently, he sold the property in favour of his brother Sh. Bahadur Singh vide sale deed dated 19.12.2006, forcing the appellant to file a suit for specific performance of the agreement to sell with



further relief of declaration that the sale deed dated 19.12.2006 is not binding on his rights. On 05.03.2007, a civil suit for recovery on the basis of pronote and receipt was filed by Sh. Baljeet and Sh. Rameshwar, which was decreed on 03.04.2012. He filed the execution petition. Simultaneously, the suit filed by the appellant for specific performance of agreement to sell was decreed on 16.12.2013 declaring that the sale deed executed by Sh. Bagdawat Singh in favour of his brother shall not be binding upon the appellant's rights. In execution of money decree, the suit property was attached vide order dated 02.12.2014, against which objections were filed by the appellant. The Executing Court directed the decree holders of the money decree to recover the amount from some other property of the judgment debtor. However, the First Appellate Court has reversed the Executing Court's order while dismissing the objection petition filed by the appellant.

4. It is evident that Sh. Baljeet and Sh. Rajeshwar are unsecured creditors. They have a right to recover from the judgment debtor i.e. Sh. Bagdawat Singh, however, Sh. Bagdawat Singh executed an agreement to sell in favour of the appellant on 20.07.2006. The suit for specific performance of the agreement to sell has been decreed in favour of the appellant, which in appeal has been affirmed by the First Appellate Court, hence, the rights of the appellant are superior to that of the unsecured creditors. The property of the appellant cannot be attached unless the Court finds that such an agreement was made in order to deprive the creditors namely Sh. Baljeet and Sh. Rajeshwar of their rights. There is no finding by the First Appellate Court to this effect.



5. Keeping in view the aforesaid discussion, the order passed by the First Appellate Court is not sustainable, hence, set aside and that of the Executing Court is restored.

6. It shall be upon to the unsecured creditors namely Sh. Baljeet and Sh. Rajeshwar to execute the decree against any other property of judgment debtor Sh. Bagdawat Singh.

7. Both the appeals are disposed of accordingly.

8. All the pending miscellaneous applications, if any, are also disposed of.

April 01st, 2025

Ayub

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*