



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

**RSA-892-1987
Decided on : 29.04.2025**

Amin Lal and others

..... Appellants

Versus

Har Narain and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Mr. Ajay Jain, Advocate
for the appellants.

Mr. Sushil Bhardwaj, Advocate
for the respondents.

VIKRAM AGGARWAL, J (ORAL)

This is plaintiff's appeal against the judgment and decree dated 13.11.1986, passed by the Court of learned Additional District Judge, Narnaul modifying the judgment and decree dated 02.03.1985, passed by the Court of learned Sub Judge First Class, Narnaul vide which the suit filed by the plaintiffs for specific performance was decreed. The First Appellate Court, while modifying the said judgment and decree, ordered refund of the earnest money.

2. For the sake of convenience and clarity, parties shall be referred to as per their original status.

3. The plaintiffs instituted a suit for specific performance of agreement to sell dated 05.07.1974 executed in respect of the suit property comprising of one *Gawara* and two *Khandars* (fully described in the plaint), situated at Mohalla Bass, Narnaul. It was averred that one Ghadsi was the owner in possession of the



suit property. On 05.07.1974, he entered into an agreement to sell with the plaintiff for a total sale consideration of Rs.2800/-. A sum of Rs.2475/- was paid as earnest money. The balance amount of Rs.325/- was agreed to be paid at the time of registration of the sale deed which was to be executed on 04.07.1975. Possession of the suit property is also stated to have been delivered at the time of execution of the agreement to sell.

4. Ghadsi unfortunately expired on 20.06.1975. The suit was instituted on 16.07.1977 against the legal heirs of Ghadsi. It was averred that despite repeated requests, the sale deed was not executed which led to the issuance of a registered legal notice dated 04.07.1975 which also did not yield any result and finally the suit was filed.

5. The suit was opposed by the legal representatives of Ghadsi (defendants). The execution of the agreement to sell was denied. They pleaded that in 1970, a family partition had taken place according to which one of the two *Gawaras* had been given to the defendant Har Narain and the other *Gawara* had been given to Sharbati Devi etc. After that, they had been in possession of these *Gawaras* as owners. A stand was taken that under the circumstances, Ghadsi had no concern with the said *Gawaras* on the date of execution of the agreement to sell. A stand was also taken that the plaintiff had obtained thumb impressions of Ghadsi on some agreement taking undue advantage of the mental condition of Ghadsi and serving him with some intoxicant. It was also averred that the suit was time barred and was, therefore, not maintainable.

6. In the replication, averments made in the written statement were denied and those made in the plaint were reiterated.

7. From the pleadings of the parties, the trial Court framed the following



issues:-

1. *Whether Garshi executed agreement of sale dated 5.7.74 in favour of plaintiff ? OPP*
2. *Whether the plaintiff has been ready and willing to perform his part of the contract ? OPP*
3. *Whether the defendants obtained the Guwara in suit under family settlement as alleged & its effect ? OPD*
4. *Whether the suit is barred by limitation ? OPD*
5. *Whether the plaintiff has no locus standi to file the suit ? OPD*
6. *Whether the plaintiff has waived his rights ? OPD*
7. *Whether there has been laches on part of plaintiff if so its effect ? OPD*
8. *Whether the agreement in suit is a result of fraud, misrepresentation & mistake of facts as alleged ? OPD*
9. *Whether Garhsi deceased was of unsound mind at the time of execution of the agreement if so its effect ? OPD*
10. *Whether the suit is not maintainable ? OPD*
11. *Whether the plaintiff is estopped from filing and maintaining the suit ? OPD*
12. *Relief.*

8. Parties led their respective evidence.

9. The trial Court decreed the suit. The First Appellate Court modified the judgment and decree passed by the trial Court as referred to in the opening part of the judgment, leading to the filing of the instant appeal.

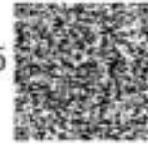
10. I have heard learned counsel for the parties.

11. Sh. Ajay Jain, learned counsel for the appellants has raised only one argument. It has been submitted that the suit filed by the plaintiffs was decreed by the trial Court. However, in the appeal filed by the defendants, the First Appellate Court made out a new case of its own that the suit property was vague since its



boundaries had not been given in the agreement to sell and, therefore, a decree for specific performance could not be granted. Learned counsel has submitted that this was never the pleaded case of the defendants and, under the circumstances, it was not open for the First Appellate Court to make out a new case of its own. Learned counsel has submitted that even otherwise, the suit property was not vaguely mentioned in the agreement to sell and that pursuant to a compromise arrived at between the parties during the pendency of the present appeal, six defendants out of seven have already executed a sale deed in favour of the plaintiffs and it is only the present appellants/defendants who subsequently agitated the factum of compromise having been arrived at and got the matter reopened. Learned counsel has submitted that the very fact that the sale deed has been executed by six defendants (legal heirs of Ghadsi) shows that the suit property cannot be stated to be vague.

12. Referring to the judgment of a Coordinate Bench of this Court, relied upon by the First Appellate Court in the case of ***Bhagwan Singh (deceased) Rep. By L.Rs. Versus Nawab Mohammad Iftikhar Ali Khan and others 1982 PLJ 386*** (Law Finder Doc Id # 62850), learned counsel has submitted that the facts were entirely different and that in the said case, a specific objection had been taken in the written statement itself whereas no such objection was taken in the written statement filed by the defendants in the present case. Reliance has also been placed upon a judgment of a Coordinate Bench of this Court in the case of ***Ranbir Singh Versus Satbir Singh 2010 (2) RCR (Civil) 712*** (Law Finder Doc Id # 208356) wherein it was held that where a specific plea had not been taken in the written statement that the agreement could not be enforced being vague, no party could be allowed to travel beyond the pleadings and raise the plea at a subsequent



stage.

13. Per contra, learned counsel for the respondents-defendants has submitted that there is no illegality in the judgment and decree passed by the First Appellate Court and that because the suit property, as mentioned in the agreement to sell, was vague and no boundaries were given, a decree for specific performance could not have been passed.

14. I have considered the submissions made by learned counsel for the parties.

15. As regards the scope of second appeal, it is now a settled proposition of law that in Punjab & 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 *Pankajjaksi (Dead) through LRs and others versus Chandrika and others (2016) (6) SCC 157* followed by judgments of the Supreme Court in the cases of *Kirodi (Since Deceased) through his Lr. Versus Ram Parkash & Ors. 2019 (3) R.C.R. (Civil) 168* and *Satyender and Ors. Versus Saroj and Ors. 2022 (12) Scale 92*. Relying upon the law laid down in the aforesaid judgments, no substantial question of law is required to be framed and this Court shall proceed to answer the question which arises for consideration.

16. The sole question which would arise before this Court would be as to whether a party can be permitted to argue beyond pleadings. A joint written statement was filed by defendants No.1 and 7. Defendant No.2 (Santa) did not file any written statement. In the written statement, no objection was taken that the boundaries of the suit property were not given or that the description was vague. It was only stated that the suit was vague but there was no reference of the suit



property. Infact, a stand was taken that in a family settlement, the defendants had become the owners of the *Gawaras*. Had the suit property been vague or had there been no dimensions or boundaries, even by way of a family settlement, the defendants could not have become owners of the same. Be that as it may, no specific objection as regards the terms of agreement being vague or the location of the suit property not being determinable or the measurements of the suit property not having been detailed in the agreement were taken in the written statement. The First Appellate Court, therefore, erred in making out totally a new case on its own despite the same not having been raised by the defendants in the pleadings and further no evidence having been led in that regard.

17. There is another aspect of the matter. When the appeal was pending before this Court, a settlement was arrived at between the parties. Accordingly, vide order dated 29.01.2014, the present appeal was allowed and the judgment and decree dated 13.11.1986 passed by the First Appellate Court was set aside and the judgment and decree dated 02.03.1985, passed by the trial Court was restored;

“Amin Lal (appellant no.1) son of Arjan is present in Court and has been duly identified by his counsel. Hanuman, the General Power of Attorney, as per deed dated 6.9.1993, through whom Mr. Divanshu Jain, Advocate was engaged to represent the respondents, is also present in Court. Ram Niwas son of Har Narain (respondent No.1) who is also representing respondents no.1, 4, 5 and 6 as well as Lali (respondent No.3) daughter of Gharsi are also present in Court.

It has been stated that respondents no.2 and 7 have died. The aforesaid respondents are now being represented through Shri Atul Gaur, Advocate, who has filed his vakalatnama along with photocopy of Power of Attorney and also the affidavits of Ram Niwas and Lali. The same are taken on record.



This Court has been informed that the power of attorney in favour of Hanuman has been cancelled by registered deed dated 28.1.2014 and the same is taken on record.

In view of the aforesaid, Mr. Divanshu Jain, Advocate seeks permission of this Court to withdraw his Power of Attorney on behalf of the respondents.

He is allowed to do so.

Counsel for the parties have brought to the notice of this Court that the parties have compromised and as per the affidavit submitted on behalf of Ram Niwas and Lali, they have no objection in case this appeal is accepted and decree for specific performance of agreement to sell is passed in favour of the appellants.

At this stage, it may be noticed that Shri Ram Niwas, the General Power of Attorney of respondents no.1, 4, 5 and 6 as well as Lali (respondent no.3) who are present in Court, have been duly identified by their counsel Shri Atul Gaur, Advocate. The aforesaid persons have duly identified their signatures/thumb impressions on the affidavits filed in the Court today. Moreover, on a query put by the Court, they have accepted that they have no objection in case the instant appeal is accepted and suit of the appellants is decreed.

In view thereof, keeping in view the submissions made, as noticed above, this appeal is allowed and the judgment and decree of the lower Appellate Court are set aside and the judgment and decree of the trial Court are restored.”

18. However, subsequently, a review application was filed by only one applicant namely Krishna, daughter of Smt. Santa, defendant No.2. The said application for review was allowed vide order dated 08.07.2024. In the meantime, the remaining defendants executed the sale deed in favour of the plaintiffs on 26.10.2018. It cannot, therefore, be said that the suit property was not identifiable.

19. Under the circumstances, this Court is of the considered opinion that



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the First Appellate Court erred in modifying the well reasoned judgment and decree dated 02.03.1985, passed by the trial Court.

In view of the above, the present appeal is allowed. The judgment and decree dated 13.11.1986, passed by the First Appellate Court is set aside and that the judgment and decree dated 02.03.1985, passed by the trial Court is upheld.

Pending application(s), if any, stand(s) disposed of accordingly.

(VIKRAM AGGARWAL)
JUDGE

29.04.2025

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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No