

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

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**RSA-158-2020 (O&M)
Reserved on : 04.03.2025
Pronounced on : 17.03.2025**

Jagjit Singh

....Appellant

VERSUS

Manjit Kaur and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sanjay Verma, Advocate for the appellant.

ALKA SARIN, J.

1. The present appeal has been preferred by the plaintiff-appellant challenging the judgment and decree dated 29.11.2014 passed by the Trial Court and judgment and decree dated 04.09.2019 passed by the First Appellate Court whereby his suit for possession by way of specific performance has been dismissed.

2. Brief facts relevant to the present *lis* are that the plaintiff-appellant filed the suit averring that the suit property was owned by one Sundri Devi who died on 19.03.1976. The said Sundri Devi had, during her life-time, agreed to sell the suit property to the plaintiff-appellant for Rs.9800/- and had also received the entire sale consideration. The possession of the suit property was already with Amrik Singh, the brother of the plaintiff-appellant. It was further pleaded that since some portion of the suit property was vesting in the Central Government and the said Sundri Devi, being allottee thereof, was in arrears of installments, she could not execute the sale deed and executed an agreement to sell dated 10.10.1972 with the

assurance that as soon as all the installments are paid she would inform the plaintiff-appellant and get the sale deed executed and registered. Sundri Devi died on 19.3.1976 leaving behind Makhni Devi and Nanki Devi as her legal heirs. It was further pleaded that before her death Nanki Devi sold her half share out of the total land measuring 25 Kanals 01 Marlas to Smt. Jasbir Kaur and Shri Jagjit Singh but the sale deed regarding the suit property could not be executed and registered because Makhni Devi also expired leaving behind defendant-respondent Nos.1 to 3 as her legal heirs. According to the plaintiff-appellant the defendant-respondent Nos.1 to 3 were bound to execute the sale deed in favour of the plaintiff-appellant as per the terms and conditions of the agreement to sell executed by their maternal grandmother, Sundri Devi, but they failed to do so despite repeated requests. Rather, defendant-respondent Nos.1 to 3 sold the suit property to defendant-respondent Nos.4 to 7 vide sale deed dated 12.01.2007. According to the plaintiff-appellant he was always ready and willing to perform his part of the contract. Hence, the suit. The defendant-respondent Nos.1 to 3 were proceeded against ex-parte. The defendant-respondent Nos.4 to 7 in their written statement took the plea that they had purchased the suit property after due verification from the revenue record as well as on payment of sale consideration and thus they being bona fide purchasers were protected under Section 41 of the Transfer of Property Act, 1882. No replication was filed by the plaintiff-appellant.

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

1. Whether the plaintiff is entitled to possession by way of specific performance of the agreement to sell

dated 10.10.1972 with regard to land measuring 12 K - 10 M being 1/2 share of total land measuring 25 K 01 M, as detailed and described in the heading of the plaint ? OPP

2. If issue no. 1 is proved, whether the plaintiff is entitled to permanent injunction restraining the defendants no.4 to 7 from further alienating the suit land in any manner, as alleged ? OPP

3. Whether suit is time barred by the law of limitation ? OPD

4. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD

5. Whether the defendants no.4 to 7 are bona fide purchasers of the suit land ? OPD

6. Relief.

4. The Trial Court vide judgment and decree dated 29.11.2014 dismissed the suit holding inter-alia that the due execution of the agreement to sell was not proved. The finding on issue no.5 was returned that the plea of Bonafide purchasers was not available to the defendant-respondent Nos.4 to 7. Aggrieved by the decision of the Trial Court, an appeal was preferred by the plaintiff-appellant which appeal was dismissed by the First Appellate Court vide judgment and decree dated 04.09.2019. The finding of the Trial Court on issue no.5 was reversed. Hence, the present regular second appeal by the plaintiff-appellant.

5. The learned counsel for the plaintiff-appellant has contended that both the Courts have erred in dismissing the suit of the plaintiff-

appellant. It is urged that the agreement to sell Ex.P1 stood proved and as the plaintiff-appellant was always ready and willing to perform his part of the contract the suit deserved to be decreed.

6. Heard.

7. In the present case both the Courts have held that the plaintiff-appellant failed to prove the due execution of the agreement to sell Ex.P1. The suit property is situated in Haryana while the agreement to sell Ex.P1 was prepared on stamp paper purchased from Uttar Pradesh on 10.10.1972 by Sundri Devi. There is no signature or seal of the stamp vendor, and neither was any examined by the plaintiff-appellant. Even the name of the scribe is not forthcoming despite the attesting witness Darshan Singh (PW2) deposing that the agreement to sell was written at Dehradun by a deed writer and the signatures of Sundri Devi were obtained in the register of the deed writer. According to the attesting witness Darshan Singh (PW2) the agreement to sell was also signed by one Lakhmi Dass but as found by both the Courts there are no signatures of any Lakhmi Dass on the agreement to sell. The several factors casting a cloud on the proper and legal execution of the agreement to sell Ex.P1 have been dealt with by both the Courts which have not been satisfactorily explained by counsel for the plaintiff-appellant. No cogent and reliable evidence has been pointed out by counsel for the plaintiff-appellant in support of the case set-up by him. In absence of any evidence in this regard, the plaintiff-appellant is not entitled to the relief of specific performance. In the face of the findings recorded by both the fact finding Courts, there is no scope for any interference by this Court. No credible and reliable evidence has been highlighted by the counsel for the plaintiff-appellant for this Court to take a contrary view from the one taken

by both the Courts. In view thereof, no fault can be found with the findings returned by both the Courts concerned. No other point was argued.

8. In view of the discussion above, no question of law, much less any substantial question of law, arises in the present case which requires determination by this Court. The appeal, being devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

17.03.2025

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO