

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

274

**RSA-2978-2024 (O&M)
Date of decision : 12.03.2025**

Smt. Phoolwati and others

..... Appellants

versus

Gurbachan and others

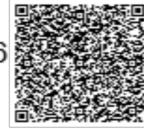
..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. A.S. Tewatia, Advocate
for the appellants.

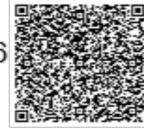
PANKAJ JAIN, J. (ORAL)

1. Defendants are in second appeal.
2. Plaintiffs filed suit seeking decree of specific performance with the consequential relief of permanent injunction.
3. As per the plaint, plaintiffs claimed that Krishan Pal-the original defendant was owner of the suit land. He offered to sell the same to the plaintiffs. Plaintiffs agreed to purchase the same for a total sale consideration of Rs.5,00,000/-. An agreement to sell dated 29.05.2013 was executed between the parties. Plaintiffs claimed to have paid the entire sale consideration of Rs.5,00,000/- to the defendant on the date of execution of the agreement to sell. Plaintiffs further claims that the parties agreed to get the sale deed executed on or before 15.06.2016, as there was loan on the suit land and it was agreed between the parties that defendant shall clear the loan on or before 15.06.2016. It is further claimed by the plaintiffs that the possession of the suit land was delivered to them at the time of execution of agreement to sell.



Plaintiffs claim that on appointed date i.e. 15.06.2016, plaintiffs appeared before Sub-Registrar Raipur Rani for execution of the sale deed. Defendant failed to turn up to perform his part of the contract. Defendant threatened to alienate the suit land and to dispossess the plaintiffs in the month of July, 2016 which resulted in the filing of the present suit on 15.07.2016.

4. Suit was contested by the defendant claiming that the agreement to sell propounded by the plaintiff dated 29.05.2013 was a fictitious document. Defendant never agreed to sell the suit land in favour of the plaintiffs. Rather father of the plaintiffs Amarjit Singh agreed to sell 14 kanal 19 marlas of land to the defendant vide agreement dated 08.07.2004 for a total sale consideration of Rs.4,00,000/-. Defendant paid him an amount of Rs.3,95,000/- on 08.07.2004. Last date for execution of sale deed was agreed to be 05.07.2005. Amarjit Singh executed sale deed in favour of defendant on 24.11.2004 qua 07 kanal 19 marlas of land. Since, 05.07.2005 was not the registration day in office of Sub-Registrar, so the defendant remained present in the office of Sub-Registrar on 06.07.2005 for execution of the sale deed on payment of balance sale consideration of Rs.5,000/- as per the terms and agreement dated 08.07.2004. After father of the plaintiffs failed to turn up, defendant filed suit bearing No.970 of 2006 seeking specific performance of contract for remaining 07 kanal of land. Amarjit Singh was proceeded ex-parte. The suit was dismissed. Defendant preferred appeal before District Judge, Panchukula. The appeal was allowed vide judgment and decree dated 13.07.2008. In execution, sale deed was executed in favour of the defendant by Local Commissioner on 09.07.2008. Amarjit Singh filed an application for setting aside ex-parte judgment and decree dated 13.07.2008, which was dismissed by District Judge,



Panchkula vide order dated 27.08.2015. There is a close relationship between the parties. Defendant agreed to sell suit land to the plaintiffs for a valuable sale consideration. However, plaintiffs failed to make payment of consideration at the time of execution of agreement to sell. Defendant denied of having delivered the possession of the suit land to the plaintiffs.

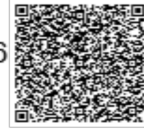
5. On the basis of the pleadings, Court of the first instance framed following issues:-

1. *Whether the plaintiffs are entitled to specific performance to the agreement to sell dated 29.05.2013?OPP.*
2. *Whether the plaintiffs are entitled to a decree for permanent injunction, as prayed for?OPP.*
3. *Whether the plaintiffs have concealed the true and material facts?OPD.*
4. *Whether the suit is not maintainable in the present form? OPD.*
5. *Relief.”*

6. While returning finding on issue No.1 and 2, Court of the first instance held the defendant having failed to appear before the Court to rebut the evidence led by the plaintiffs, adverse inference needs to be drawn against the defendant. The plaintiffs duly proved the execution of the agreement to sell Ex.P1 in his favour and payment of Rs.5,00,000/-. The willingness of the plaintiffs having been proved by affidavit Ex.P2. Trial Court decreed the suit filed by the plaintiffs.

7. Defendant preferred appeal. Lower Appellate Court affirmed the findings recorded by the Court of the first instance.

8. Counsel for the appellant while assailing the impugned judgment and decree passed by the Courts below claims that the Courts below erred in

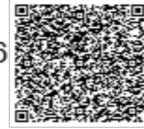


decreeing the suit filed by the plaintiff without there being any evidence on record to prove agreement to sell propounded by the plaintiffs.

9. In the considered opinion of this Court, the plea raised by the counsel representing the appellant sans merit and deserves to be rejected. The defence raised by the appellant-defendant is that agreement to sell Ex.P1 is a result of fraud. However, the executant i.e. the original defendant Krishan Pal in his written statement did not deny his thumb impression on the agreement to sell. Rather his defence was that though he agreed to sell the land in favour of the plaintiffs, but he was not paid the sale consideration as claimed. Apart from raising a bald plea that agreement to sell is a result of fraud, no evidence was led by the defendant to prove the fraud. In terms of provision contained under Order VI Rule 4 CPC, defendant was under duty to state particulars of the fraud alleged. Neither any fraud was pleaded nor any evidence was led.

10. A close scrutiny of the defence raised by the defendant further reveals that the intent to sell the land is not in dispute. He disputes receipt of earnest money. Plaintiffs having proved agreement to sell Ex.P1, which contains covenant with respect to payment of entire sale consideration, onus was upon the defendant to dislodge the same by leading cogent evidence. Defendant miserably failed to bring any evidence on record to dislodge the agreement to sell and the covenant contained therein qua payment of entire sale consideration. In view of above, this Court does not find any reason to interfere in the pure findings of fact recorded by the Courts below.

11. Needless to say even though the regular second appeals before this Court are to be dealt in terms of Section 41 of the Punjab Courts Act and not Section 100 of the Code of Civil Procedure, yet question of law is pre-requisite



to entertain the appeal. Pure finding of fact cannot be interfered in the absence of there being any question of law. Reference can be made to the observations made by Supreme Court in ***Randhir Kaur Versus Prithvi Pal Singh & Ors. 2019(17) SCC 71*** wherein it was held as under :-

*“14. The Division Bench of Punjab and Haryana High Court in a judgment reported in ***Sadhu v. Mst. Kishni, 1980 AIR (Punjab) 85*** set aside the judgment of the learned Single Bench in an intra court appeal in terms of the provisions of law as it existed prior to 1976, and held as under:*

*“12. The scope of second appeal as envisaged by section 100 of the Civil Procedure Code and section 41 of the Punjab Courts Act has been a matter of judicial scrutiny a number of times by this court as well as by the final court, that is, the Supreme Court of India. The learned counsel for the appellant has actually made a reference in this regard to ***Detty Paitabhiramaswami v. S. Hanymayya [AIR 1959 Supreme Court 57.]***, ***Madamanchi Ramappa v. Muthaluru Bojjappa [AIR 1963 Supreme Court 1633.]***, ***Bithal Dass Khanna v. Hafiz Abdul Hai [1969 S.C. Notes 481.]*** and ***Afsar Shaikh v. Soleman Bibi [(1976) 2 SCC 142 : AIR 1976 Supreme Court 163.]***. These pronouncements; in a nutshell, lay down that there is no jurisdiction to entertain a second appeal on the ground of a erroneous finding of fact, however gross or inexcusable the error may seem to be. Nor does the fact that the finding of the first appellate Court is upon some documentary evidence make it any the less a finding of fact. A Judge of the High Court has, therefore, no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate court based upon an appreciation of the relevant evidence. Their Lordships have further observed that the only ground on which such an appeal can be said to be competent is where there is an error in law or procedure and not merely on an error on a question of fact.*

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14. In view of the above discussion, we are clearly of the view that the learned Single Judge exceeded his jurisdiction in setting aside the findings of the fact on issue No. 2. The provisions of section 100 being clear and unambiguous, there was no scope for interference with those findings. We thus allow the appeal and set aside the judgment of the learned Single Judge and affirm the judgment and decree passed by



the District Judge. The parties are, however left to bear their own costs.

15. A perusal of the aforesaid judgments would show that the jurisdiction in second appeal is not to interfere with the findings of fact on the ground that findings are erroneous, however, gross or inexcusable the error may seem to be. The findings of fact will also include the findings on the basis of documentary evidence. The jurisdiction to interfere in the second appeal is only where there is an error in law or procedure and not merely an error on a question of fact.”

12. The said dictum was further elaborately echoed by three Judges Bench in ***Satyender and Ors. Versus Saroj and Ors. 2022 AIR (Supreme Court) 4732*** as under :-

“XXXX

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17. Be that as it may, though the requirement of formulation of a substantial question of law was not necessary, yet Section 41 of the Punjab Courts Act, requires that only such decisions are to be considered in second appeal which are contrary to law or to some custom or usage having the force of law or the court below have failed to determine some material issue of law or custom or usage having the force of law. Therefore, what is important is still a "question of law". In other words, second appeal is not a forum where court has to re-examine or re-appreciate questions of fact settled by the Trial Court and the Appellate Court.....”

13. Finding no question of law involved in the present appeal, the same is ordered to be dismissed.

14. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

**(PANKAJ JAIN)
JUDGE**

12.03.2025

Dinesh

Whether speaking/reasoned
Whether Reportable :

Yes
No