

**IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH****115****RSA-1380-2020 (O&M)****Date of decision: 27.03.2025****Ramesh Kumar****...Appellant(s)****Vs.****Capt. Dudh Chand Gupta (since deceased)
through his LRs****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Ashok Giri, Advocate for the appellant.

NIDHI GUPTA, J.

The plaintiff is in second appeal against the concurrent judgments and decrees of the learned Courts below, whereby the suit filed by the appellant for specific performance of Agreement to Sell dated 18.11.2002, has been dismissed by both the Courts below.

2. The parties shall hereinafter be referred to as per their status before the learned trial Court i.e. the appellant is the 'plaintiff'; and respondents are the 'defendants'.

3. It is submitted by learned counsel for the plaintiff that the Agreement to Sell dated 18.11.2002 was duly proved on record by the plaintiff. The plaintiff had produced as witness the Scribe Shaminder Pal Singh PW2, who had proved the Agreement in question. It is submitted that in this view of the matter, learned Courts below are in error in dismissing the suit of the plaintiff on the ground that provision of Section 68 of the Evidence Act, has not been complied with. Learned counsel submits that

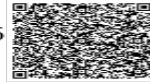


plaintiff had also pointed out to the learned Courts below that the attesting witnesses to the Agreement could not be produced as one of the attesting witnesses namely Arjun Dev had suffered a paralytic attack due to which he was unable to appear. However, the plaintiff had produced his son PW3 Anil Dutt, son of Arjun Dev who had led evidence to prove the Agreement in question. The second attesting witness, namely, Varinder Kumar had gone abroad so he could not be produced. However, learned Courts below have failed to appreciate these facts; and the fact that from the evidence of PW2 Shaminder Pal Singh, Agreement stood proven in accordance with law. Ld. Courts below also failed to appreciate that the appellant had given cogent evidence for not being able to produce the attesting witnesses to the Agreement in question.

4. It is further submitted that learned Courts below have also ignored the fact that the defendant has duly admitted his signatures on the stamp paper as also receipt of any earnest money yet has denied execution of any such Agreement. The defendant has pleaded fraud and forgery, but he failed to lead any evidence in this regard. It is accordingly prayed that the present appeal be allowed; and the impugned judgments and decrees of the learned Courts below be set aside.

5. No other argument is raised on behalf of the appellant/plaintiff.

6. I have heard learned counsel for the appellant/plaintiff and perused the case file in great detail.



7. I find no merit in the submissions made on behalf of the appellant/plaintiff. Perusal of the record of the case shows that the original Agreement to Sell dated 18.11.2002 was never produced by the plaintiff as the said Agreement was stated to have been lost, in respect of which DDR (Ex.P6) was also lodged. Thus, the plaintiff had led secondary evidence in respect of the Agreement in question Mark 1/Mark A.

8. However, even the same was unreliable as admittedly no attesting witness was produced by the plaintiff. It has been stated by the plaintiff that one of the witnesses namely, Arjun Dev, the plaintiff has stated that he could not be produced before the learned trial Court as he had suffered from paralytic attack; and the plaintiff had, accordingly, produced his son Anil Dutt PW3. However, the evidence in this regard was found to be unsatisfactory by the learned Courts below.

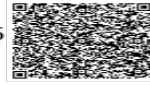
9. Regarding the other attesting witness, namely Varinder Kumar, it has been stated by the plaintiff that he could not be produced as he had gone abroad. However, the record reveals that no pleading to this effect has been made by the plaintiff and even no evidence has been led in this regard. Moreover, during the course of hearing to the present appeal, learned counsel for the appellant has admitted that only an oral assertion was made by the plaintiff during his examination-in-chief that attesting witness namely, Varinder Kumar had gone abroad. Further, in para 16 of the judgment dated 20.02.2016 passed by the learned trial Court, it is recorded that *"no explanation for non-examination of other witness has been given."*



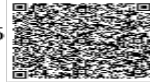
Thus, no explanation was given by the plaintiff before the learned Courts below, for non-examination of 'other witnesses' i.e. Varinder Kumar.

10. From the foregoing facts, it was crystal clear that plaintiff had failed to give any cogent evidence for non-production of the witnesses to the Agreement in question; and, therefore, failed to prove Agreement dated 18.11.2002 in accordance with law.

11. The said Agreement is further cast in shadow of doubt as record reveals that as per the pleadings in the plaint, the Agreement was scribed by PW2 in the Tehsil Complex Ropar in the presence of the witnesses. However, during his cross-examination, the plaintiff as PW1 has stated that Agreement was executed at the residence of the deceased defendant's house i.e. Ashiana Restaurant in the absence of any witness. This establishes that none of the alleged attesting witnesses were present at the time of execution of the Agreement to Sell. Further, the evidence of the plaintiff is in contradiction of deposition of PW2 Scribe who had deposed that deceased defendant had approached the Scribe in Tehsil Complex Ropar along with the plaintiff and other witnesses for execution of the Agreement. Even PW3 Anil Dutt has deposed that he had taken his father Arjun Dev deceased defendant to Ropar on a scooter. The said deposition of the above said witness are in direct contrast of the evidence of the plaintiff in his cross-examination to the effect that Agreement was executed at the residence of the deceased defendant i.e Ashiana Restaurant in the absence of the witnesses.



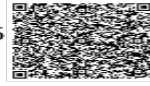
12. In any event, reliance placed by the plaintiff upon the evidence of PW3 is misplaced as PW3 Anil Dutt, son of Arjun Dev has admitted in his cross-examination that he had no personal knowledge in respect of the shop in dispute. PW3 had further deposed that when he and Arjun Dev reached at the seat of Scribe, the Agreement in question already stood drafted and completed. To the contrary, the plaintiff had deposed that the stamp paper was purchased by the deceased before he/plaintiff had reached on 18.11.2002. PW3 further failed to disclose the denomination of the stamp paper; or also other details as to who had purchased the same, numbers of pages on which the Agreement was scribed; or the number of the places where the deceased and the plaintiff had appended their signatures. PW3 has further admitted in his cross-examination that he has failed to mention the date of Agreement in his affidavit of evidence. Moreover, PW3 had failed to state at any stage as to whether he had seen Agreement Mark-A or identify the signatures of his father on the said Agreement. It was also the testimony of PW3 that in June 2002, the deceased defendant had met with an accident in which he had sustained multiple fractures and injuries; whereafter he remained confined to bed. The above evidence of PW3 would indicate that the pleading of the plaintiff to the effect that Agreement in question was executed at Tehsil Complex Ropar in the presence of the witnesses is incorrect; and would in fact lend credence to the admission of the plaintiff during his cross-examination that the Agreement was written at Ashiana Restaurant/residence of the



deceased defendant, where none else apart from the plaintiff was present and in the absence of the witnesses.

13. It is also to be noted that before this Court, the plaintiff has stated that earnest money of Rs.1,25,000/- was paid. However, no evidence was led by the plaintiff to prove the payment of earnest money of Rs.1,25,000/-. During his cross-examination, plaintiff/PW2 had admitted that he had not withdrawn any amount from his bank account for payment of the said amount; and has further stated that no money transaction took place. The said contradictory statements of the plaintiff cast shadow of doubt on the Agreement in question.

14. As regards the loss of the original Agreement to Sell, it was the case put forth by the plaintiff that when the said original Agreement was being taken by the employee of the plaintiff namely, Gopal Krishan, the same was lost by Gopal Krishan. However, Gopal Krishan has admitted during his cross-examination as PW5 that he had no evidence to prove his employment with the plaintiff. Gopal Krishan was unable to show any proof of salary receipt from the plaintiff at any point of time. He was also unable to give any evidence in respect of the Agreement in question and has in fact admitted that he was not a signatory to the Agreement, nor the Agreement was scribed in his presence. To the contrary, in his affidavit of evidence Gopal Krishan proved his signatures at point A and B and has given a detailed description of the execution of the Agreement; which is in contradiction of his above said admission during his cross-examination regarding the non-execution of the Agreement in his presence.



15. It has further come on record that the original target date set in Agreement was 15.05.2003, which was extended to 15.11.2003. It has been submitted on behalf of the plaintiff that the said date of 15.11.2003 was further extended to 25.12.2003. However, the evidence on file reveals that the plaintiff had failed to prove extension of date of execution of Sale Deed from 15.11.2003 to 25.12.2003 as the entry as per which the date so extended, did not bear the signatures of the deceased defendant.

16. Learned counsel for the appellant is unable to controvert the above said facts and findings.

17. In view of the discussion above, no ground is made out to interfere in the impugned judgments and decrees of the learned Courts below. The present regular second appeal is hereby **dismissed**.

18. Pending applications, if any, stand disposed of.

27.03.2025

Divyanshi

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No