



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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RSA-1667-2025(O&M)
Date of decision: 15.05.2025

Mohinder

...Appellant(s)

Vs.

Dara Chand @ Dara Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Raj Kumar Kakkar, Advocate
for the appellant (through VC).

NIDHI GUPTA, J.

Present second appeal has been filed by the defendant No.2 against the concurrent judgments and decrees of the learned Courts below whereby the suit filed by the plaintiffs/respondents No.1 and 2 herein, for specific performance of Agreement to Sell dated 15.04.2013 in respect of the suit land measuring 20 kanal 11 marla as described in the head note of the plaint; **and** for possession of the suit land; **and** with alternate relief of recovery of Rs.25,68,750/- i.e. Rs.24 lakh double of amount of Rs.12 lakh paid as earnest money and Rs.1,68,750/- as damages and compensation for non-fulfilment of the Agreement on part of the defendants along with interest @ 2% per month; has been decreed with costs by both the Courts below. By way of the impugned judgments and decrees, the plaintiff has been held entitled to possession of land measuring 20 kanal 11 marlas by way of specific performance of Agreement



to Sell dated 15.04.2013 upon deposit of balance sale consideration within 6 months.

2. Learned counsel for the appellant/defendant No.2 inter alia submits that Agreement to Sell dated 15.04.2013 is alleged to have been executed by Ram Narain predecessor-in-interest of the defendants. However, execution of any such Agreement has been denied at every stage by the defendants. Even the same was not proved by the plaintiffs. The receipt of earnest money of Rs.12 lakh was also denied. Even Dara Chand plaintiff/PW1 has admitted in his cross-examination that he could not prove source of Rs.12 lakh which was allegedly paid to Ram Narain as earnest money. Further, in the Agreement, it was recited that possession of land had been delivered to the plaintiffs; whereas in actual fact, defendants are in possession of the suit land. Even otherwise, when there is a recital in the Agreement regarding delivery of possession, the stamp paper requisite for the Sale Deed was required to be affixed on the Agreement. However, the Agreement was scribed on stamp paper worth Rs.25/- only. Thus, the Agreement was required to be impounded. However, this was illegally and wrongly not done by the learned Courts below.

3. Furthermore, Dara Chand in his cross-examination has admitted that Agreement was not scribed in his presence or in the presence of the witnesses. He has admitted that he saw the Agreement for the first time at the receipt of notary where the witnesses were also sitting. He



further stated that money did not exchange hands in the presence of Notary and the earnest money was paid inside Tehsil Complex.

4. Dara Chand could even not prove the readiness and willingness of the plaintiffs on the stipulated date of 15.04.2014. Plaintiffs did not submit any application for marking their presence before the learned Sub-Registrar within the stipulated date. Thus, the plaintiffs have failed to prove their readiness and willingness. Further, there are material discrepancies in the evidence. Thus, the learned Courts below erred in passing the impugned judgments and decrees on the basis of discrepant evidence. The defendants had produced DW1 Moti Ram an attesting witness of Sale Deed dated 08.09.1992 to prove the standard signatures of Ram Narain. DW2 Varun Gugneja Handwriting & Fingerprint expert proved that disputed signatures of Ram Narain on the Agreement do not tally with standard signature of Ram Narain on the Sale Deed. DW4 Krishan Lal further proved the standard signature of Ram Narain. DW5 Satpal Ex. Sarpanch proved the due execution of writing dated 26.09.2012 vide which, the accounts between Ram Narain and Hazari Lal father of the plaintiffs was settled. Balram DWo proved that he had scribed the writing dated 26.09.2012 when a dispute between Hazari Lal and Ram Narain was there, there was no question of executing agreement of sale by Ram Narain in favour of Dara Chand and plaintiffs. Rajinder Kumar defendant stepped into witness box as DW7 to prove his case. The learned Lower Courts wrongly



and illegally relied upon the statement and report of Anil Kumar Gupta Handwriting & Fingerprint Expert and wrongly and illegally ignored the report and statement of Varun Gugneja DW2. The Id. Lower Courts wrongly observed that signature of Ram Narain on writing dated 26.09.2012 should have been got compared with disputed signature of Ram Narain on the agreement. The Id. Courts wrongly raised a presumption that the defendants avoided comparison of question signatures with contemporary standard signatures. It is accordingly prayed that present appeal be accepted and both the impugned judgments and decrees dated 23.01.2025 and 30.07.2018 passed by learned Additional District Judge, Ferozepur and Civil Judge (Junior Division), Ferozepur be set aside.

5. No other argument is made on behalf of the appellant.

6. I have heard learned counsel for the appellant and perused the case file in great detail. I find no merit in the submissions made on behalf of the appellant/defendant No.2.

7. All the arguments raised on behalf of the appellant are contrary to the findings on record. The Agreement to Sell dated 15.04.2013 was duly proved on record. In fact, it can be said that the said Agreement dated 15.4.2013, had been admitted by the defendants in their written statement as, it was averred that the plaintiffs had taken signature of Ram Narain on blank papers. The signature of Ram Narain on the disputed Agreement to Sell was proved by the plaintiffs from evidence of PW4 Anil



Kumar Gupta, Handwriting and Finger Print Expert who submitted his report (Ex.PW4/B) thereby reporting that disputed signature of Ram Narain was similar in writing characteristic and had been written by one and the same person. The defendants had also examined their own handwriting expert DW2 Varun, who vide his report (Ex.DW2/A) had concluded that the disputed and standard signatures did not match. However, the said report could not be relied upon as the disputed signature was compared with old standard signature of the year 1992. Old standard signature was taken despite the fact that a more recent admitted signature of Ram Narain was available with the defendants on the writing dated 26.09.2012. Thus, it has been correctly held by the learned Courts below that Agreement was “impliedly admitted” by the defendants.

8. Brief facts of the case as pleaded in the plaint are that Ram Narain husband of defendant No.1 and father of defendants No.2 and 3 being owner in possession of suit land measuring 20 kanal 11 marlas, had entered into Agreement to Sell dated 15.04.2013 with the plaintiffs.

9. The Agreement to Sell was also proved from the evidence of attesting witness Rakesh Kumar PW2, who had tendered his affidavit (Ex.PW2/A) and had deposed that Agreement to Sell dated 15.04.2013 was executed by Ram Narain in favour of the plaintiffs; and earnest money of Rs.12 lakh was received by Ram Narain in his presence; and after admitting the contents of the Agreement to be correct and true,



he had affixed his signatures upon the same; and date of sale was fixed for 15.04.2014. It is to be noted that the other attesting witness namely Rameshwar was examined by the defendants as DW8. However, he had also stated in his examination-in-chief that disputed Agreement to Sell (Ex.P1) bears his signatures as attesting witness and plaintiff Dara Chand had paid earnest money of Rs.12 lakh in his presence to Ram Narain and that it was agreed between the parties to sell the suit land at the rate of Rs.10 lakh per acre. Even in his cross-examination, DW8 has admitted that the contents of the Agreement were read over and explained to Ram Narain in his presence and in presence of the other witnesses and after admitting the contents of the Agreement to be true and correct and after receiving the earnest money, Ram Narain had affixed his signatures on the Agreement in his presence which was then got attested from Notary Public; and Ram Narain also put his signatures in the register of the Notary Public. Thus, the Agreement to Sell stood duly proven from the evidence of the defendants themselves.

10. PW3 Vikas Kumar, Stamp Vendor had tendered affidavit (Ex.PW3/A) thereby deposing that on 15.04.2013, Ram Narain had purchased stamp papers of Rs.25/- for Agreement to Sell in favour of the plaintiffs; and Ram Narain had put his signatures on the overleaf of the stamp paper. PW3 had also identified his stamp and signatures (Ex.P10/A) against purchase of stamp paper of Rs.25/-. PW3 had duly made entry in his



register at serial No.361 dated 15.04.2013 which was sealed and signed by him as Ex.P10/A.

11. It has also been contended by learned counsel for the appellants that the Scribe was not examined. It is my opinion that as the signature of Ram Narain upon the disputed Agreement was “impliedly admitted” by the defendants in their written statement, the necessity of examining the scribe was not imperative. As already noticed above, defendants in their written statement had admitted that plaintiffs had obtained signatures of Ram Narain on various blank papers, typed papers, etc.; thereby impliedly admitting the signature of Ram Narain on the disputed Agreement. In any event, as also recorded above, the Agreement proved from substantial other evidence on record.

12. As regards argument of the appellant in respect of the source of funds of earnest money of Rs.12 lakh, plaintiffs had produced PW5 Mohinder Kumar with whose firm the plaintiffs were having business dealings and he had entries in favour of the plaintiffs for requisite amounts, which were corroborated by ledger entry and vouchers, which were also proved. The plaintiffs had also produced enough evidence to show availability of balance sale consideration for execution and registration of Sale Deed. Presence of the plaintiffs in the Tehsil was also proven by way of Affidavit dated 15.04.2014 (Ex.PW6/B); as also vide Affidavit dated 18.05.2015 whereby they had marked their presence after giving notices to



the defendants to execute the Sale Deed. Thus, readiness and willingness of the plaintiffs to perform the contract was also proven on record.

13. Learned counsel for the appellant is unable to dispute or controvert the aforesaid facts and findings.

14. In view of the above, present appeal is **dismissed**.

15. Pending application(s) if any also stand(s) disposed of.

15.05.2025

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No