



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

RSA-2516-2003 (O&M)

Reserved on: 10.09.2025

Pronounced on : 16.09.2025

Durga Dass (Deceased) through LRs**... Appellant/defendant****V/S****Hira Singh (Deceased) through LRs and others****... Respondents/plaintiffs****CORAM: HON'BLE MRS. JUSTICE RAMESH KUMARI**

Present: Mr. Baldev Raj Mahajan, Senior Advocate with
Mr. Som Nath Saini, Advocate
for the appellant/defendant.

Mr. Amit Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the respondents/plaintiffs.

RAMESH KUMARI, J.

1. The appellant/defendant (hereinafter referred as 'defendant') has filed the present regular second appeal assailing the findings of learned trial Court in Civil Suit No. 923 of 20.05.1993 decided on 22.10.2001 and first Appellate Court in Civil Appeal No. 87 of 19.11.2001. The learned trial Court decreed the suit for possession by way of specific performance of agreements to sell filed by the respondents/plaintiffs (hereinafter referred as 'plaintiffs') against the defendant was decreed by the learned trial Court with direction to execute the sale deed within one month from rendering of judgement by the learned trial Court, upon receiving balance sale consideration amount and in case, the defendant did not turn up, the plaintiffs were at liberty to get the same executed through court of law. The remaining sale consideration was also ordered to be deposited in Court within 15 days from passing of judgement and the defendant was directed to execute sale



deed within one month of deposit of balance sale consideration amount.

First appeal was dismissed on 09.04.2003.

THE FACTS

2. The case of the plaintiffs is that defendant entered into agreement to sell dated 30.04.1987 entered in the register of PW-1 Deed-writer Mahavir Parshad Jain, vide P-1 for sale of his 1/2 share in the suit property in favour of plaintiffs No. 1 to 3 to the extent of 1/3rd share and plaintiffs No. 4 to 7 to the extent of 2/3rd share @ Rs.39,000/- per *killa* of 4 *bighas* and received Rs.20,000/- as earnest amount. The possession of the suit property was also delivered to the plaintiffs on same day. On 31.03.1988, the plaintiffs gave Rs.2,000/- more as earnest amount on the demand of defendant and the defendant in continuation of earlier agreement dated 30.04.1987 executed another agreement Ex.P-2 dated 31.03.1988. The plaintiffs were informed at the time of execution of agreements that defendant has civil litigation at Rajpura pertaining to the suit property and he will intimate the plaintiffs through post regarding the decision of the suit and thereafter, the plaintiffs will get the sale deed executed and registered in their favour within two months of said intimation. The defendant did not intimate the plaintiffs about the result of civil litigation and he tried to alienate the suit property in the month of August, 1992 and threatened to dispossess the plaintiffs from the suit land. The plaintiffs filed suit for permanent injunction against him seeking prayer to restrain him from alienating the suit property to any person and of their dispossession. Interim injunction was granted in favour of the plaintiffs. The defendant had submitted written statement Ex.P-3, wherein, he disclosed that civil suit has been dismissed in the



year 1991-92. The defendant also took the plea that his wife and minor children are entitled for maintenance and they have also filed civil suit against the defendant. From the filing of written statement of the defendant, the plaintiffs came to know about the result of civil suit at Rajpura and it was clear from the averments of the written statement that the defendant was not ready and willing to perform his part of the contract and in order to avoid specific performance of both the agreements, the defendant got filed a suit for recovery of maintenance against him from his wife and sons. The plaintiffs got the suit for permanent injunction dismissed as withdrawn vide order Ex.D-3 on 03.06.1993 and filed the present suit for specific performance of agreements to sell dated 03.04.1987 and 31.03.1988.

WRITTEN STATEMENT

3. The defendant filed written statement denying the execution of both the agreements and specifically alleged that the plaintiffs have not placed on record original agreement to sell. The defendant is poor farmer and is involved by the plaintiffs in false litigation. His source of income is agriculture and he has no other source of income. Agreements are not genuine nor executed voluntarily or with consideration. The plaintiffs got involved the defendant in civil and criminal litigation by instigating his brother Surjan Singh and by misrepresenting, obtained the signatures of the defendant on various papers to help the defendant in these cases and the defendant became victim of conspiracy of the plaintiffs with Surjan Singh to grab the property of the defendant through deceitful manner. The sale consideration is inadequate and unreasonable. The suit is barred under Order 2 Rule 2 CPC and Section 23 CPC. The



suit property is ancestral, which cannot be alienated without legal necessity and benefit of estate.

4. Respondents filed replication, wherein they have reiterated the averments of plaint and controverted the averments of written statement.

THE ISSUES

5. Learned trial Court framed the following issues:-

1. Whether plaintiff executed an agreement of sale on 30.4.87 and 31.3.88 in favour of defendants regarding suit land? OPP
2. Whether plaintiffs have remained ready and willing and still ready and willing perform his part of contract? OPP
3. Whether plaintiffs are entitled possession by way of specific performance of agreement dated 30.4.87 and 31.3.88? OPP
4. Whether suit is within time? OPP
5. Whether plaintiffs have no cause of be action to file instant suit? OPD
6. Whether the suit property is ancestral and could not be alienated without legal necessity? OPD
7. Whether plaintiff has no locus standi to file present suit? OPD
8. Whether plaintiff is estopped to file present suit by his own act and conduct ? OPD”
9. Whether the suit is within time? OPD.
10. Whether suit is barred U/o 2 Rule 2 and Order 23 CPC? OPD”

THE EVIDENCE

6. Plaintiffs examined PW1 Mahavir Parshad Jain Deed-writer of agreement dated 30.04.1987, who in his statement before the Court proved the entry of his register vide Ex.P-1 regarding scribing of agreement dated 30.04.1987. He also deposed about writing of this agreement at the instance of defendant in favour of plaintiffs as stated by PW-2 and also deposed about other recitals of agreement dated 30.04.1987.



PW-3, Ram Gopal is attesting witness of agreement Ex.P-2 dated 31.03.1988 and he deposed regarding scribing of this agreement at the instance of defendant after receipt of further earnest amount of Rs.2,000/-.

The plaintiff No. 6 Harbans Singh, stepped into the witness box as PW-2 and corroborated the averments of plaint.

The defendant himself examined as DW-2 and corroborated the averments of written statement.

DW-1 Karnail Singh also corroborated the averments of written statement.

7. Upon hearing the arguments and perusing of evidence, learned trial Court decided all the issues in favour of the plaintiffs and against the defendant and decreed the suit as mentioned in para No.1 of this judgement.

8. Defendant filed first appeal against judgement dated 22.10.2001 of learned trial Court and learned first Appellate Court while deciding the Civil appeal No. 87 of 19.11.2001 on 09.04.2003, dismissed the first appeal.

ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT

9. Arguments are addressed on the issues by both learned counsel for the parties and for the sake of brevity, issues No. 1 and 2 are taken up together.

9(i) Learned senior counsel for the defendant contended that original agreement to sell dated 30.04.1987 was never produced in the Court. The entry of the register of the scribe is got proved from PW-1 Mahavir Parshad Jain, Deed-writer. There is no mention of attesting



witnesses of agreement dated 30.04.1987 in Ex.P-1. None of the attesting witnesses of this agreement are examined. In order to prove agreement dated 31.03.1988, plaintiffs examined PW-3, Ram Gopal. This agreement is also allegedly scribed by PW-1 Mahavir Parshad Jain Deed-writer but his testimony is silent whether he scribed agreement dated 31.03.1988, Ex.P-2. PW-2 Harbans Singh did not state that the agreement was for sale of $\frac{1}{2}$ share from 24 *bighas* and few *biswas* of land, but he stated that the agreement was regarding 24 *bighas* and few *biswas* of land. In fact, no amount was paid to the defendant either on 30.04.1987 or on 31.03.1988. There is reference of payment of Rs. 2,000/- on the margin of agreement Ex.P-2, but it is not signed by the defendant-Durga Dass. Thus, the payment of earnest money is not proved. The sale consideration is inadequately mentioned in both the agreements. The rate of the property cannot be Rs. 39,000/- per killa of 4 *bighas*. As stated by Mahavir Parshad Jain, Deed-writer the rate of 4 *bighas* of land in Village Rauni is Rs.10 Lacs per killa (4 *bighas*). In fact, no agreement to sell was entered with the plaintiffs. There was no receipt of earnest money to the defendant. No possession was delivered to the plaintiffs. The suit is filed by the plaintiffs at the instance of his brother Surjan Singh with whom the defendant had false litigation and his signatures were obtained on various papers by fraud, which was converted into agreements. Neither the original agreement to sell dated 30.04.1987 nor its photocopy is produced on record. The statement of PW-2 Harbans Singh (plaintiff No.6) that original agreement dated 30.04.1987 was lost and if the agreement dated 30.04.1987 had been lost, the plaintiffs would have got recorded this fact in subsequent agreement Ex.P-2. Learned counsel for



the appellant also invited the attention of the Court towards cross-examination of Harbans Singh PW-2 (plaintiff No.6) who during cross-examination stated that *“the first agreement, my house fell because of rain and agreement was lost, The first agreement was lost 7-8 months prior to writing of Ex P2. We have not got recorded this in Ex P2 that the first agreement has lost. I cannot give any reason as to why it has not been got recorded in Ex P-2 that first agreement has lost.”*

9(ii) Learned senior counsel for the defendant further contended that in application under Section 65 of the Evidence Act, it is stated that in para 3 that photocopy of said agreement was produced with the plaint at the time of its presentation in the Court, which is attached with the plaint and photocopy of the entry of said agreement in the register of Deed-writer is attached with the application, but perusal of the trial Court record shows that no photocopy of the agreement was placed on record and only copy of the entry in Deed-writer register was produced and it does not contain any signature of alleged vendor, vendee or names and signatures/thumb impression of attesting witnesses. The case of the plaintiffs that they were given possession at the time of execution of agreement dated 30.04.1987, is controverted from the recital of *jamabandi* Ex.P-5, produced on record by the plaintiffs themselves, which reflects that they claim to be in possession on the basis of agreement Ex.P-2 dated 31.03.1988. There is also no pleadings or recitals in the agreement dated 30.04.1987 or 31.03.1988, the possession of which side/portion of the land from 24 *bighas*, 5 *biswas*, were given. In fact on agreement Ex.P-2, the signatures of defendant were obtained on blank paper and thereafter, it was scribed, as proved from the spacing of



lines. It is stated that land was mortgaged, but there was no mention of any mortgage in any of the agreements. PW-2, Harbans Singh has also stated that amount was received by PW-3 Ram Gopal. This proves that nothing was paid to the defendant. The observation of learned first Appellate Court that defendant received Rs.2,000/- on the day of execution of agreement Ex.P-2, are contrary to the testimony of PW-2 Harbans Singh and PW-3 Ram Gopal. It is stated by PW-2 Harbans Singh that land was not mortgaged with PW-3 Ram Gopal for Rs.2,000/- and amount of Rs.2,000/- was received by him but no mortgage deed is placed on record. The plaintiffs have taken an undue advantage of litigation of the defendant with his brother Surjan Singh and agreements are not a result of free will and are result of playing a fraud and he vehemently prayed for setting aside the findings of learned trial Court on these two issues.

ARGUMENTS OF LEARNED COUNSEL FOR THE PLAINTIFFS

10(i). Learned senior counsel for the plaintiffs contended that the defendant was in need of money because he had litigation with his brother. His brother Surjan Singh had filed suit for joint possession against the defendant Durga Dass on 29.01.1987, i.e. Suit No. 78 in which judgement Ex.D-4, was rendered on 29.02.1992. Since the defendant was in need of money and he agreed to sell his $\frac{1}{2}$ share in the suit property in favour of plaintiffs No.1 to 3 to the extent of $\frac{1}{3}$ rd share and plaintiffs No. 4 to 7 to the extent of $\frac{2}{3}$ rd share @ Rs.39,000/- per killa (4 bighas) and executed agreement dated 30.04.1987. Original agreement dated 30.04.1987 has since been lost 7-8 months prior to execution of second agreement Ex.P-2 dated 31.03.1988 and the



plaintiffs have proved the same by leading secondary evidence from the entry Ex.P-1 of the register of Deed-writer PW1 Mahavir Parshad Jain. Instead of getting the sale deed executed in terms of agreement dated 30.04.1987, the defendant extended the agreement on 31.03.1988, vide Ex.P-2, and also received Rs.2,000/- as additional earnest amount. The recitals of agreement Ex.P-2 reveals that Rs.2,000/- was received in addition to earlier amount of Rs.20,000/- There is reference of earlier agreement dated 30.04.1987 in subsequent agreement Ex.P-2. The possession was also delivered in terms of agreement dated 30.04.1987. Earlier the land was mortgaged with PW-3 Ram Gopal and Rs.2,000/- paid to PW-3 Ram Gopal as mortgage money and the possession was delivered to the plaintiffs. There is a stipulation in Ex.P-2, that sale deed was to be executed after the civil case litigation of the defendant at Rajpura comes to an end and the defendant was to inform the plaintiffs through post and thereafter, the sale deed was to be executed within two months of getting the information regarding end of civil litigation at Rajpura, but the defendant failed to inform the plaintiffs that the civil litigation with his brother has come to an end and he tried to alienate the property. Coming to know about that the defendant is bent on to alienate the suit property, the plaintiffs filed a suit for permanent injunction restraining him from alienating the suit property. The defendant filed written statement Ex.P-3 wherein, he admitted the execution of both the agreements and now the defendant cannot resile from the agreements. He has not refuted the execution of both the agreements in written statement Ex.P-3.



10(ii) Learned senior counsel for the plaintiffs further contended that in fact the defendant got civil suit for maintenance filed from his wife and sons to defeat the rights of plaintiffs. Agreement Ex.P-1, is duly proved by way of secondary evidence and agreement Ex.P-2, was scribed first and then after admitting its contents as correct, defendant Durga Dass signed the same. It is also proved by PW-3 Ram Gopal, attesting witness. There is note by the Deed-writer that Rs.2,000/- is received in cash by Durga Dass in the presence of scribe and attesting witnesses and this fact is duly proved by PW-3 Ram Gopal. Since attesting witness of Ex.P-2 is examined, there was no necessity to get Ex.P-2 proved from PW-1 Mahavir Parshad Jain, Deed-writer. Regarding the execution of agreement, the defendant has given evasive replies. Whereas, in written statement Ex.P-3, he had admitted the execution of agreements. After coming to know that since the defendant put off the matter of execution of agreements to sell, plaintiffs withdrew the civil suit for permanent injunction and filed the present suit within two months of coming to know of end of litigation and learned trial Court rightly perused the oral and documentary evidence and passed the decree in favour of the plaintiffs and the findings of the learned trial Court are not assailed by learned first Appellate Court. He has also vehemently prayed for dismissal of regular second appeal.

FINDINGS ON ISSUE

ISSUE Nos. 1 AND 2.

11(i) Issues No. 1 and 2 are taken up together being interconnected.



The timeline of litigation of the defendant with his brother Surjan Singh and the execution of agreements propounded by the plaintiffs is very important.

11(ii) Judgement Ex.D-4 reflects that Surjan Singh brother of the defendant filed Suit No.78 on 29.01.1987, which was decided on 29.02.1992. The said suit was for joint possession to the extent of $\frac{1}{2}$ share in agricultural land measuring 24 *bighas* 5 *biswas* situated in village Rauni, Tehsil Rajpura, and $\frac{1}{2}$ share regarding the house shown with words ABCD in site plan and further for declaration that judgement and decree dated 07.10.1970 is illegal qua the rights of the plaintiff (Surjan Singh) and permanent injunction restraining the defendant (Durga Dass) from alienating or any other manner transferring the land or house. This judgement further reveals that Munsha Ram, father of Surjan Singh and Durga Dass, executed Will dated 15.06.1966 and also to avoid future dispute made Durga Dass owner of disputed property by way of civil court decree dated 07.10.1970. Learned Court vide judgement and decree D-4 and D-5, dismissed the suit by holding that plaintiff Surjan Singh failed to prove that judgement and decree dated 07.10.1970 are illegal and Surjan Singh is not entitled to joint possession to the extent of $\frac{1}{2}$ share in the suit land and house. Appeal against judgement and decree D-4 and D-5 were dismissed vide judgement D-1 and decree D-2 of learned Additional District Judge on 25.02.1999.

11(iii) The first agreement to sell dated 30.04.1987 propounded by plaintiffs is soon after institution of Civil Suit No.78 of 29.01.1987 above referred. The original agreement dated 30.04.1987 was not produced before learned trial Court and it is proved by way of leading secondary



evidence and copy of entry of the register of Deed-writer is proved vide Ex.P-1. The contention of the learned counsel for the defendant that its lost is not proved and it cannot be read on record, cannot be accepted. PW-2, Harbans Singh in his testimony before the Court specifically stated on oath that the original agreement is lost due to demolition of his house and he failed to find it in spite of search. When the statement of Deed-writer PW-1, Mahavir Prashad Jain, was recorded before the learned trial Court on 24.02.1997 and photocopy of entry of his register regarding execution of agreement dated 30.04.1987 was exhibited vide P-1, it is objected to by counsel for the defendant. However, there is no specific mention whether the objection was regarding the late production of document or on any other ground. Moreover, the suggestion put to PW-1 Mahavir Prashad Jain, Deed-writer, which is denied by him is that Durga Dass has not executed any agreement with his free consent. Thus, so far scribing of agreement dated 30.04.1987 by Durga Dass-defendant is concerned, the same is admitted by him, but his plea is that it was not executed with free consent. Thus, it was for the defendant to prove under what compelling circumstances or duress or coercion, his consent was obtained. However, during the course of arguments, learned counsel for the defendant has totally denied the scribing of agreement Ex.P-1 at the instance of defendant. Execution of agreement Ex.P-1 is not only proved from the testimony of PW-1 Deed-writer, Mahavir Parshad Jain but also from the testimony of PW-2 Harbans Singh (plaintiff No.6), who specifically stated that about 11 years back, defendant agreed to sell 24 *bighas* few *biswas* of land in his favour @ 39,000/- per killa, 4 *bighas* and the writing of agreement was prepared by Mahavir Parshad Jain



Deed-writer at the instance of Durga Dass and after admitting the same as correct, defendant signed in Hindi. He also signed. As per the terms of agreement, he paid Rs.20,000/- to the defendant and also signed on the agreement. The Deed-writer also put his stamp and signature and also made entries in his register. He also obtained the signature of defendant in his register and further proved the copy of entry of register of Deed-writer vide P-1, which is correct as per record. Here again agreement Ex.P-1 is objected to but the ground on which the entry of register of Deed-writer is objected to, is not mentioned and it seems that he objected to the documents only for the sake of raising objection. The contention of learned counsel for the defendant that DW-3 Harbans Singh in his testimony before the Court mentioned the agreement regarding 24 *bighas* few *biswas* of land instead of $\frac{1}{2}$ share in it is only a clerical error and liable to be ignored.

11(iv) It has also come on record that plaintiffs filed Civil Suit No. 5895 on 17.08.1993 for permanent restraining the defendant from alienating the suit property to the extent of $\frac{1}{2}$ share. The defendant filed written statement vide P-3 and first objection raised by the defendant Durga Dass in written statement of that suit is *“that the suit for permanent injunction is not maintainable as the alleged agreement to sell has come to an end because the plaintiffs have failed to perform their part and the defendant has already been remained ready to perform his part. The alleged agreement to sell is unenforceable. As such, the suit for permanent injunction is liable to be dismissed.”*

Thus, defendant-Durga Dass has not denied the execution of agreement dated 30.04.1987 or agreement dated 31.3.1988. His case is



that agreements could not be enforceable because of failure of the plaintiffs to perform their part of the contract, whereas the defendant Durga Dass remained ready and willing to perform his part of the contract. The admission of fact regarding execution of agreements at his instance in favour of the plaintiffs in written statement Ex.P-3, cannot be brushed aside.

11(v) Here Section 58 of Code of Civil Procedure comes into play, which stipulates that *“no fact need to be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any Rule or pleadings enforce at the time they are deemed to have admitted by their pleadings.”* Although, there is a proviso to Section 58, *“that the Court may in its discretion, requires the facts admitted to be proved otherwise, than by such admissions.”* In the instant case, the scribing of agreements dated 30.04.1987 which was entered in the register of PW-1, Deed-writer vide P-1 and second agreement dated 31.03.1988 Ex.P-2 is not only got proved by the plaintiffs by examining the PW1, Deed writer, who proved the entry of register vide Ex.P-1, and PW-3 Ram Gopal, attesting witness of agreement Ex.P-2 but also the admission on the part of the defendant by way of filing written statement, Ex.P-3 in previously instituted suit for permanent injunction filed by the plaintiffs.

11(vi) Case of the plaintiffs is that after execution of agreement dated 30.04.1987, which was entered in register of deed writer vide Ex. P-1, defendant executed another agreement dated 31.03.1988, Ex. P-2, which is in continuation of earlier agreement dated 30.04.1987. The



existence of earlier agreement dated 30.04.1987 is also proved from the recitals of Ex.P-2. This agreement is in Punjabi and when translated in English, it makes the following reading:-

“I Durga Dass son of Mansa Ram caste Saini resident of Dera Bassi Khewatdar Mauja Rauni Tehsil Dera Bassi.

That I have agreed to sell land comprised in Khasra number 381 0-8, 383 3-6, 384 (2-0), 385 (2-9), 386 (0-11), 387 (3-3), 388. (3-18), 391 (2-7), 389 (1-16), 390 (3-13) = 24 Bigha 5 Biswa to the extent of ½ share 12 Bigha 3 Biswa situated at village Rauni above said against sum of Rs.39,000/- (rupees thirty nine thousands) per acre equal to 4 Bigha in favour of Ramji Dass, Balwant Singh, Harbans Singh, Amrik Singh ss/o Sadi Ram to the extent of two thirds share min Charan Singh, Sher Singh s/o Ram Kishan equal share 1/3 resident of Bhankarapur Sub Tehsil Dera Bassi while confirming the agreement dated 30.4.87 at that time while receiving an amount of Rs.20,000/- (Twenty Thousand Rupees) received in cash as earnest money and the possession of the land in question had already with the vendees and the vendees will get the Girdawari entered in their name and now the vendor needs more money, therefore, today an amount of Rs.2000/- (Two Thousand Rupees) have been received in cash from the vendees (to return the loan of Lal Chand & Ram Gopal Ss/o Shri Ram R/o Dera Bassi) now the vendor have received total amount of Rs.22000/- (Twenty Two Thousand Rupees) and there is a Civil Suit pending at Rajpura about the above-said land, when it will be informed through post. And after the receipt of the information the vendees shall get the sale deed executed from the vendor. In case the vendors refused then the vendees will be entitled to get the

Note: Rs.2000/- (Two Thousand Rupees) received in cash by Durga Dass in my presence dated above-said.
Sd/-
Dated: 31.03.1988



agreement enforced through the Court after depositing the balance amount of the above-said land or the vendees will be entitled to receive total the amount. I shall not have any objection. In case the vendees refused then the earnest money received from them shall be forfeited and the Agreement to Sell and the above-said land shall be cancelled and the vendees shall handover the possession to me. The Agreement dated 30.04.1987 shall remain intact and the parties shall remain bound of that. Therefore, the agreement of sale of land has been returned and forfeited to be correct.

Dated 31.03.1988

<i>Witness</i>	<i>Vendor</i>	<i>Vendee</i>	<i>Witness</i>
<i>Bhag Singh s/o Durga Kundan Singh Dass R/o Dera Bassi</i>		<i>Harbans Singh</i>	<i>Ram Gopal S/o Shri Ram R/o Dera Bassi</i>

The plaintiffs were not required to examine the attesting witness of agreement dated 30.04.1987 because there is a recital regarding execution of this agreement in subsequent agreement Ex.P-2, dated 31.03.1988 as well as in the written statement Ex.P-3. There is a specific note in Ex.P-2 that Rs.2,000/- is received by Durga Dass in their presence and thereafter, there is stamp and signature of PW-1 Deed-writer Mahavir Parshad Jain. Undisputedly, when PW-1 Mahavir Parshad Jain, stepped into the witness box, he only deposed about the first agreement dated 30.04.1987 and is silent about the subsequent agreement Ex.P-2 dated 31.03.1988, but this lapse cannot affect the case of the plaintiff because the execution and recital of agreement Ex.P-2, dated 31.03.1988 are proved from the testimony of PW-3, Ram Gopal, as well as plaintiff No.6, Harbans Singh, when he stepped into the witness box as PW-2. Learned trial Court rightly observed that “so far as the allegation



of the defendant is concerned that as per PW-2, Ram Gopal, agreement was lost 7-8 months prior to the execution of agreement between the parties on 31.03.1988. Even if the word lost has not been incorporated in agreement Ex.P-2, it would hardly affect the case of the plaintiff as earlier agreement dated 30.04.1987 has been duly mentioned in this agreement Ex.P-2.....” By alleging in written statement Ex.P-3, in previously instituted suit No. 5895 of 17.08.1993 that the plaintiffs have failed to perform their part of the contract and the defendant had always been remained ready to perform his part, the defendant invariably admitted the execution of both the agreements. The defendant in his written statement Ex.P-3 did not take the plea that his signatures were obtained on blank paper at the bottom and thereafter, agreement Ex.P-2 was reduced into writing. He has also not denied the execution of agreement dated 30.04.1987. The recitals of agreement Ex.P-2, proved that all the lines are naturally written with natural spacing in between the lines. The defendant-Durga Dass, when stepped into the witness box in his testimony before the Court simply denied the execution of agreement dated 30.04.1987 or any other agreement. He also denied his signature on agreement Ex.P-2 and PW2/A. He is not a trustworthy witness because he expressed ignorance regarding filing of Civil Suit No.5897 of 17.08.1992 (by plaintiffs) against him and also expressed ignorance that he had filed written statement (Ex.P-3) in the said case. Rather, he deposed that no case was filed by the plaintiff against him neither he filed any written statement. At another stage of his cross-examination, he stated that he had filed written statement not through counsel Mr. Rajesh, Advocate but Mr. Sahib Singh, in suit for permanent injunction but both



of them were jointly practising. Learned trial Court and learned First Appellate Court rightly concluded that it is proved that defendant agreed to sell the suit property to the plaintiffs for a sum of Rs.39000/- per killa of 4 bighas and he received Rs.20,000/- as earnest money and not only agreement was reduced into writing but possession was also delivered at the spot to the plaintiffs and possession has also been shown in the jamabandi Ex. P5 wherein in Column No.9, it is clearly mentioned that plaintiffs are in possession of the suit property on the basis of one agreement dated 31.3.1988. The learned trial Court rightly concluded that, *“The witnesses can lie but the document can never. All the documents are in favour of plaintiffs at this stage of the case. Further defendant alleged that stipulation laid in agreement Ex.P2 is vague as there is no mention about the civil suit on the decision of which, sale deed was to be executed in favour of the plaintiffs. One civil suit dated 17.8.1992 has been held to be main cause of stipulation incorporated in the agreement Ex.P2 but the question arises how the plaintiffs anticipated in the year 1987 that such and such suit will be filed and decided in the year 1992.”*

The defendant executed agreement dated 30.04.1987, for his $\frac{1}{2}$ share in the suit property for consideration of Rs.39,000/- per killa of 4 bighas and he received Rs.20,000/- as earnest money on 30.04.1987, the entry of which was made in the register of PW-1, Deed-writer vide Ex. P-1, and then he executed subsequent agreement dated 31.03.1988, vide Ex. P-2 in continuation of previous agreement dated 30.04.1987 and Rs.2,000/- was received on 31.03.1988, and there was a specific stipulation in agreement Ex.P-1 that defendant will execute sale deed in



favour of the plaintiff on receiving remaining sale consideration amount when he will disclose about the decision of pending civil case at Rajpura by post to the plaintiffs, but failed to inform the plaintiffs that the litigation with his brother has come to an end on 25.02.1999, when appeal against judgement and decree dated 29.02.1992 Ex.D-3, was dismissed vide Ex.D-1. There is no illegality or perversity in the findings of learned trial Court and learned First Appellate Court that defendant executed agreement of sale on 18.04.1987, Ex. P-1 and on 31.03.1988, Ex.P-2, and the plaintiffs always remained ready and willing and still ready and willing to perform their part of the contract and rightly decided both issues No. 1 and 2 in favour of the plaintiffs and against the defendant.

ISSUE NOS. 4 AND 9.

12(i) Issues No. 4 and 9 are pertaining to limitation clause. As noted earlier, in agreement, Ex.P-2, there is a specific recital that defendant will execute the sale deed in favour of the plaintiffs after receipt of remaining sale consideration, when he will disclose the defendant by post the decision of pending civil suit. There is nothing more written regarding the nature of civil suit. The defendant himself has brought on record the filing of civil suit by his brother Surjan Singh on 29.01.1987, which was decided on 29.02.1992, vide judgement Ex.D-4 and decree Ex.D-5 and the appeal against the said judgement and decree Ex.D-4 and Ex.D-5, was decided on 25.02.1999 vide judgement Ex.D-1 and decree Ex.D-2. The plaintiffs have specifically pleaded that the defendant failed to inform them that the civil litigation has come to an end and he threatened to alienate the suit property and they filed suit for



permanent injunction, in which the defendant evaded the execution of agreement to sell. Written statement Ex.P-3 filed by defendant Durga Dass in said civil suit for permanent injunction has already been discussed, wherein, he did not deny the execution of agreements but only pleaded that the plaintiffs were not willing to perform their part of the contract and he had always been ready to perform his part. The written statement Ex.P-3 was filed by the defendant on 26.03.1993 and the said suit was got dismissed as withdrawn by the plaintiffs and they filed the present suit on 20.05.1993 i.e. within two months of coming to know that defendant has no more litigation with his brother. It seems that the defendant evaded execution of agreement to sell because with passage of time, the market rate of the property escalated because in written statement Ex.P-3, filed by defendant in previously instituted suit for permanent injunction, he had specifically pleaded that value of the land is more than Rs. 2 Lacs per *bigha* and it is not in the interest of justice to enforce the said agreements.

12(ii) So far as the limitation to execute the agreement Ex.P-1 dated 30.04.1987, which was extended vide agreement Ex.P-2 dated 31.03.1988 is concerned, reference can be made here to observation of Hon'ble Apex Court in *S. Brahmanand and others Versus K.R. Muthugopal (D) and others, 2005(4) R.C.R. (Civil) 508.* In the said case also it was stipulated in the agreement that performance would be done immediately on termination of Court proceedings. The court proceedings terminated on 18.06.1992 and it was held that it would be considered that date fixed for performance was 18.06.1992 and the limitation of 3 years for specific performance would start from 18.06.1992. It was further held



that the expression “date fixed” in Article 52 of Limitation Act need not to be a calendar date, but time period fixed with reference to a certain event, the happening of which is definite.

Therefore, learned trial Court and First Appellate Court rightly concluded that suit for possession by specific performance of agreements is filed within period of limitation.

ISSUE NO.10

13. The learned trial Court framed issue No.10 as follows:-

“Whether suit is barred under Order 2 Rule 2 CPC and Order 23 CPC.” It has come on record that earlier the plaintiffs filed Civil Suit No. 5897 of 17.08.1992/17.03.1993 against the defendant for permanent injunction restraining him from forcibly dispossessing the plaintiffs from suit property situated in the revenue estate of Village Rauni, Tehsil Rajpura and from alienating or transferring his ½ share in the same to any other person other than the plaintiffs. It was only after filing of written statement Ex.P-3 in the said suit that the plaintiffs came to know that defendant is evasive in execution of sale deed in terms of recitals of agreements Ex.P-1 and P-2. After filing of written statement Ex.P-3 by the defendant, the said suit for permanent injunction was withdrawn by the plaintiffs and the suit in hand for possession by way of specific performance of agreements of sale has been filed. Regarding the plea that on the basis of Order 2 Rule 2 CPC and Section 23 CPC, the present suit is barred, reference can be made here to observation of Hon'ble Supreme Court in **Gurbux Singh v. Bhooralal, (1964) 7 SCR 831** wherein it is held that the plea of a bar under Order 2 Rule 2 CPC being a technical bar it has to be established satisfactorily and cannot be presumed merely



on basis of inferential reasoning. It was held that a plea of a bar under Order 2 Rule 2 of the CPC can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. As observed earlier, the suit is filed within the period of limitation and the earlier suit being for permanent injunction, there was no identity of cause of action in previous suit and present suit which is for possession by way of specific performance of agreements to sell and previous instituted suit will not to operate as *res judicata* and the learned trial Court and First Appellate Court rightly held that the suit in hand was not barred under Order 2 Rule 2 and Section 23 of CPC because the cause of action in both the suits was different although pertaining to the same property. Therefore, findings of the learned trial Court and first Appellate Court on this issue are upheld.

ISSUE NOS. 5, 6, 7 and 8

14. The defendant has taken legal objection that plaintiffs have no cause of action to file the suit. Execution of agreements Ex.P-1 and P-2 by the defendant on receipt of earnest amount of Rs.20,000 and Rs.2,000/- for sale of suit property is duly proved by the plaintiffs and PW-2, Harbans Singh also proved his readiness and willingness of the plaintiffs to perform their part of the contract and there was failure on the part of defendant to inform the plaintiffs that his litigation with his brother at Rajpura has come to an end. Therefore, the plaintiffs have *locus standi* and cause of action to file the suit and no act and conduct is attributed to the plaintiffs or proved on record from which it can be concluded that the plaintiffs are estopped from filing the suit. The



defendant also failed to prove that suit property is ancestral and could not be alienated without legal necessity. It seems that only to avoid the execution of sale deed in terms of agreements Ex. P-1 and P-2, he had taken the plea that suit property is ancestral property. Whereas he failed to lead any evidence to prove this fact. The suit property is held self acquired property of defendant from his father by way of decree dated 07.10.1970. The findings of the learned trial Court and first Appellate Court on all these issues are upheld and these issues are decided against the defendant and in favour of the plaintiffs.

ISSUE NO.3.

15. Now the moot point is whether the plaintiffs are entitled for possession by way of specific performance of agreement, Ex.P-1, dated 30.04.1987 and agreement Ex.P-2 dated 31.03.1988. Reference can be made to Section 20 of the Specific Relief Act, which reads as under:

*“20. **Substituted performance of contract.**-(1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872 (9 of 1872), and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach.*

(2) No substituted performance of contract under subsection (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as specified in the notice, and on his refusal or failure to do so, he may



get the same performed by a third party or by his own agency:

Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.

(3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach.

(4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.”

It well settled that grant of relief of specific performance is discretionary and will not be granted if the party seeking the same has not approached the court with clean hands. In [*Zarina Siddiqui v. A. Ramalingam, \(2015\) 1 SCC 705*](#), it was observed :

"33. The equitable discretion to grant or not to grant a relief for specific performance also depends upon the conduct of the parties. The necessary ingredient has to be proved and established by the plaintiff so that discretion would be exercised judiciously in favour of the plaintiff. At the same time, if the defendant does not come with clean hands and suppresses material facts and evidence and misleads the court then such discretion should not be exercised by refusing to grant specific performance.”

In [*A.C.Arulappan v. Smt. Ahalya Naik, AIR 2001 SC 2783*](#), the Hon'ble Supreme Court has held as follows:-

"The jurisdiction to decree specific relief is discretionary and the Court can consider



various circumstances to decide whether such relief is to be granted. Merely because it is lawful to grant specific relief, the Court need not grant the order for specific relief, but this discretion shall not be exercised in an arbitrary or unreasonable manner. Certain circumstances have been mentioned in [S.20\(2\)](#) of the Specific Relief Act, 1963 as to under what circumstances, the Court shall exercise such discretion. If under the terms of the contract the plaintiff gets an unfair advantage over the defendant, the Court may not exercise its discretion in favour of the plaintiff. So also, specific relief may not be granted if the defendant would be put to undue hardship which he did not foresee at the time of agreement. If it is inequitable to grant specific relief, then also the Court would desist from granting a decree to the plaintiff."

To the similar effect is another judgement of Hon'ble Supreme Court in [V. Muthusami\(dead\) by L.Rs v. Angammal and others, AIR 2002 SC 1279](#), wherein it has been laid down that where the performance of a contract involves some hardship to the defendant which he did not foresee, then the Court may properly exercise its discretion not to decree specific performance.

It has come on record also as reflected in Jamabandi Ex.P-5, that the plaintiffs are in possession over suit property in terms of agreement dated 31.03.1988. Before that suit property was under mortgage. The defendant was not in possession of suit property at the time of execution dated 30.04.1987 or 31.03.1988. The defendant in written statement never took the plea that he is declining to honour the



agreements because of increase in the value of suit property. His only defence is that he is agriculturist, suit property is only source of his income and the plaintiffs were not ready and willing to perform their part of the contract whereas he remained ready and willing. The defendant failed to prove on record any document that after termination of his litigation with his brother, Surjan Singh, he ever informed the plaintiffs regarding that by post and calling upon them to pay him remaining sale consideration and his willingness to execute the sale deed in favour of plaintiffs. Therefore, simply because the sale price of suit property has escalated with the passage of time is no ground to decline the relief of specific performance of agreements P-1 and P-2. No act and conduct is proved on record which debarred the plaintiffs from getting the sale deed executed in their favour or that they have not approached the Court with clean hands. Learned trial Court and First Appellate Court rightly held that the plaintiffs are entitled for possession as owner of suit property by specific performance of above referred agreements by execution of sale deed of suit property in their favour. The findings of the learned Trial Court and First Appellate Court on issue No.3 are upheld and this issue is decided in favour of the plaintiffs.

CONCLUSION:

16. In view analysis of oral and documentary evidence on record, case law and arguments of learned counsel for the parties as discussed above, there is no merit in the regular second appeal, and is hereby dismissed.

16.09.2025
pooja saini

(RAMESH KUMARI)
JUDGE

<i>Whether Speaking/Reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>