

138 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025.PHHC:051227



RSA-1340-2022 (O&M)
DATE OF DECISION : 21.04.2025

RAGHBIR

... APPELLANT

V/S

MANSUKH

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Sandeep Kumar Yadav, Advocate for the appellant.

* * *

PANKAJ JAIN, J. (ORAL)

Defendant is in second appeal.

2. For convenience, the parties herein after are referred to by their original position in the suit i.e. the appellant as defendant and the respondent as plaintiff.

3. Plaintiff filed a suit for specific performance vide agreement to sell dated 27.02.2012 claiming that the same was executed by defendant in his favour agreeing to sell land measuring 10 Kanal 05 Marlas as detailed out in the plaint for a total sale consideration of Rs.5,77,000/-. The plaintiff paid an amount of Rs.3,50,000/- as earnest money. Parties agreed to get the sale deed executed on or before 27.02.2013. Actual physical possession of the suit land was delivered to the plaintiff and he remained ready and willing to perform his part of contract and appeared before the office of Registrar on

27.02.2013 but the defendant failed to appear before the Sub Registrar.

4. Suit was contested by the defendant denying execution of the agreement-to-sell. As per the defendant, agreement-to-sell propounded by the plainiff was result of fraud and misrepresentation.

5. On the basis of pleadings, Trial Court framed the following issues.

“1. Whether the defendant executed an agreement to sell dated 27.2.2012 qua the suit property for total consideration of Rs.5,77,000/- in favour of the plaintiff?

OPP

2. Whether plaintiff has paid Rs.3,50,000/- out of total sale consideration of Rs.5,77, 000/-? OPP

3. Whether plaintiff is/was ready and willing to perform the part of the contract? OPP

4. If the above said issues are to be proved, whether applicant is entitled for decree of possession by way of specific performance of the contract on the basis of agreement to sell dated 27.2.2012 against the defendant?

OPP

5. Whether agreement to sell is result of fraud and misrepresentation? OPD

6. Whether plaintiff has not locus-standi and cause of action to file and maintain the present suit? OPD

7. Whether plaintiff has not come to the Court with clean hands and concealed true and material facts from the Court?

OPD

8. Whether plaintiff has filed false and frivolous suit? OPD

9. Relief.”

6. Court of the First Instance dismissed the suit answering issues No.1 to 4 against the plaintiff holding that fraud and misrepresentation in execution of agreement-to-sell, Ex.P4 cannot be ruled out.

7. Dissatisfied, plaintiff filed appeal.

8. Lower Appellate Court has partly allowed the appeal preferred by the plaintiff decreeing the suit for alternate relief of recovery of earnest money of Rs. 3,50,000/-.

9. Mr. Yadav has assailed the findings recorded by the Lower Appellate Court that despite the fact that the Court of First Instance after appreciating the evidence came to the conclusion that the agreement-to-sell in question was result of fraud and misrepresentation. The Lower Appellate Court erred in reversing the findings without there being any reason. He further submits that the fraud at the behest of the plaintiff is evident from the fact that an effort was made to create false document in the shape of Ex.D-1 i.e. affidavit showing presence of the plaintiff before the office of the Registrar on 27.02.2013.

10. I have heard learned counsel for the parties and have carefully gone through the records of the case.

11. The entire defence of the defendant-appellant is that the signatures may have been obtained on blank papers at the time of execution of the sale deed i.e. 23.07.2008. It is those blank papers which have been misutilised for creation of the agreement-to-sell. The aforesaid defence stands demolished from the record. The sale deed was executed on 23.07.2008 whereas the stamp paper which was utilised for scribing the

agreement-to-sell was purchased only on 27.02.2012.

12. Mr. Yadav fairly admits that defendant has not been able to prove as to how his signatures on a stamp paper dated 27.02.2012 came into being. The defence raised by the defendant is not that he did not sign the agreement-to-sell. The Courts thus rightly decreed the suit filed by plaintiff for alternate relief.

13. In view thereof, I find no merits in the present Second Appeal. The same is ordered to be dismissed.

21.04.2025

Janki

**(PANKAJ JAIN)
JUDGE**

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