





mortgaged (with possession) the suit property vide registered mortgage deed dated 28.05.1979 for Rs.28,000/- in favour of the plaintiffs, namely, Sh. Bachittar Singh, Sh. Bikkar Singh and Sh. Nihal Singh sons of Sh. Sardara Singh. The execution and registration of the mortgaged deed is admitted by defendants No. 1 to 3, namely, Sh. Swarn Singh @ Sarwan Singh, Sh. Gurcharan Singh and Smt. Basant Kaur.

1.4. Subsequently, Sh. Swarn Singh @ Sarwan Singh, Sh. Gurcharan Singh and Smt. Basant Kaur are alleged to have entered into an agreement to sell on receipt of Rs.20,000/- out of total sale consideration of Rs.82,000/- with respect to the mortgaged property on 25.10.1986, in favour of the mortgagees, namely, Sh. Bachittar Singh, Sh. Bikkar Singh and Sh. Nihal Singh. The sale was agreed to be executed and registered on or before 28.05.1987. The plaintiff visited the office of the Sub Registrar on 28.05.1987, however, the defendants did not come forward to honour the agreement to sell and to perform their part of the contract. Later on, it came to the notice of the plaintiffs that defendants No. 1 to 3 have sold the property in favour of defendants No. 4 to 6 on 19.05.1987. Hence, the plaintiffs filed the suit for specific performance while delivering symbolic possession on 03.06.1987 while asserting that they were always ready and willing to perform their part of the contract. The defendants No. 1 to 3 admitted the execution of the mortgage deed, however, denied the execution of the agreement to sell. It was alleged by the defendants No. 1 to 3 that the plaintiff wanted to buy the suit land at a throwaway price of Rs. 12,000/- per acre to which the defendants did not agree, hence, the defendants sold the suit land to defendant No. 4 to 7. The defendants



claim that the alleged agreement to sell dated 25.10.1986, is a forged and fabricated document.

1.5. The defendants No. 4 and 5 filed separate written statements that they are the *bona fide* purchasers of the property. They also denied execution of the agreement to sell.

## 2. Evidences Adduced:-

2.1. The plaintiff examined PW/1-Sh. Amarjit Singh, Clerk in the office the Sub Registrar, Moga, who proved that on 28.05.1987, the plaintiffs visited the office of the Sub Registrar and got their affidavit attested in token of their presence. PW/2-Sh. Atma Singh attesting witness of the agreement to sell was also examined by the plaintiff. The plaintiff also appeared as PW/3. The agreement to sell, mortgage deed and jamabandi for the years 1981-82 was produced.

2.2. On the other hand, the defendants examined Sh. Dewan K.S. Puri Handwriting Expert, DW/1-Gurcharan Singh, DW/2-Baljit Singh, DW/3 and produced report of the Handwriting Expert and original sale deeds Ex.DA, DB and DC.

## 3. Issues framed, and decision of the trial Court:-

3.1 The trial Court culled out the following issues:-

- "1. Whether defendants no.1 to 3 agreed to sell the disputed land to the plaintiffs vide agreement dt. 25.10.86?OPP.
2. Whether the plaintiffs have always been ready and willing to perform their part of the contract? OPP.
3. Whether the plaintiffs are entitled to specific performance of agreement of sale?OPP.



4. *If issue No. 3 is not proved whether the plaintiffs are entitled to recover Rs.70000/-from the defendants as an alternative relief?OPP.*
5. *Whether defd, No.4 to 7 are bonafide purchasers of the suit land for valuable consideration without notice of the agreement (in question if so to what effect ?OPD*
6. *Relief."*

3.2. On the basis of oral deposition of Sh. Atma Singh and the report of the expert the trial Court dismissed the suit.

**4. Reasons recorded by the First Appellate Court:-**

4.1. Before the First Appellate Court, the plaintiff filed an application for permission to re-examine Sh. Dewan K.S. Puri Handwriting and finger print Expert permitting him to re-examine the documents as previously his opinion was sought only with respect to the signatures of the defendant No.3 on the agreement to sell. The prayer was made that the expert should be permitted to re-examine the admitted signatures of Sh. Swarn Singh @ Sarwan Singh, Sh. Gurcharan Singh on the registered mortgage deed with the agreement to sell dated 25.10.1986, which was allowed and the Handwriting Expert opined and the signatures of Sh. Swarn Singh @ Sarwan Singh, Sh. Gurcharan Singh on agreement to sell matched with their signatures of the registered mortgage deed, which is admitted.

4.2. Thus, the First Appellate Court granted decree qua 2/3<sup>rd</sup> share of the land measuring 41 kanals 01 marla subject to payment of proportionate price while adjusting the mortgaged amount.

**5. Arguments addressed:-**

5.1. Learned counsel representing the appellants has highlighted that defendants No. 1 to 3 have already sold the property in favour of defendants



No. 4 to 7 who are not the *bona fide* purchasers because two witnesses of the two sale deeds, namely, Sh. Gajinder Singh and Sh. Bachan Singh are residents of village Bade Ghar, whereas, the land is situated at Chhota Ghar. They would have told defendants No. 4 to 6 about the previous agreement to sell. Moreover, defendants No. 4 to 7 cannot claim to be purchasers because the plaintiffs are in possession as mortgagees. Before purchasing the land, they were required to make equity form the persons who were purchasers of the property. Hence, the equities is also not in favour of defendants No. 4 to 7.

5.2. Learned counsel representing the respondents has submitted that the agreement to sell becomes doubtful because the Handwriting Expert was not called upon to give opinion about the thumb-impression of Smt. Basant Kaur.

## **6. Analysis and Discussion:-**

6.1. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book alongwith the scanned copy of the requisitioned record.

6.2. While partly allowing the appeal, this Court formed an opinion that the plaintiffs are not entitled to alternative relief of refund of earnest money instead of specific performance.

6.3. To err is human. One should not shy away from correcting the errors. Hence, this Court has proceeded to re-hear the appeal in detail. The first reason for denying for specific performance was on the basis of Section 12 of the Specific Relief Act, 1963 (hereinafter referred to as 'the 1963 Act'). It would be noted here that Smt. Basant Kaur and his two sons, namely, Sh. Swarn Singh @ Sarwan Singh, Sh. Gurcharan Singh jointly executed a



mortgage deed on 28.05.1978. Subsequently, they jointly entered into an agreement to sell in favour of the plaintiffs on 25.10.1986. The First Appellate Court has held that the thumb-impression of Smt. Basant Kaur has not been proved as the handwriting expert was not called upon to compare her thumb-impression. The plaintiffs have not filed any cross-appeal. Thus, the Court has held that the plaintiffs failed to prove that Smt. Basant Kaur executed an agreement to sell. However, this issue is debatable. But as already noticed the plaintiffs have not filed any appeal. In other words, now Smt. Basant Kaur did not execute the agreement to sell. Hence, Section 12 of the 1963 Act would not come into operation. A Division Bench of this Court in 'Kapoor Singh Vs. Surider Singh', 1993 PLJ 170, held that if a co-sharer has not signed the agreement to sell, Section 12 of 'the 1963 Act' would not be applicable, particularly, when the separate share of remaining co-owners can be identified. In this case, 41 kanals 01 marla land was equally owned by three co-owners. Hence, the share of Smt. Basant Kaur can be separated. The First Appellate Court has carried out the aforesaid exercise. Hence, Section 12 of the 1963 Act is not applicable.

6.4. The second reason assigned is with regard to the lending of money. The plaintiffs are alleged to be money lenders, however, it is not the case of the defendants while filing the written statement. The property was mortgaged with possession in the year 1979. There is no evidence that the plaintiffs were charging any interest. Hence, the plaintiffs continued in possession of the property.

6.5. However, it was the defendants No. 1 to 3 who pleaded that the agreement to sell is forged and fabricated. They were required to prove the



same. The First Appellate Court has found that Sh. Gurcharan Singh is not a reliable witness. Moreover, failure to examine Sh. Satish Kumar, Typist, who typed the agreement to sell and Sh. Jugraj Singh other attesting witness of the agreement would not be sufficient to discard the written contract, particularly, when the plaintiff visited the office of Sub Registrar on 28.05.1987. The plaintiffs were already in possession of the property, Furthermore, the land was agreed to be sold @ Rs.16,000/- per acre and not Rs. 12,000/- as claimed by the defendants No. 1 to 3.

7. **Decision:-**

7.1. Keeping in view the aforesaid discussion, there is no ground to interfere in the judgment of the First Appellate Court.

7.2. Hence, the appeal is dismissed.

7.3. All the pending miscellaneous applications, if any, are also disposed of.

(ANIL KSHETARPAL)  
JUDGE

27.03.2025

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No