



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**RSA-158-1989
Reserved on 25.09.2025
Pronounced on 30.09.2025**

Mahabir Singh and Others

...Appellants

versus

Smt. Munni

...Respondent

CORAM: HON'BLE MR. JUSTICE PARMOD GOYAL

Present: Mr. Sanjay Kaushal, Senior Advocate with
Mr. A.P. Setia, Advocate and
Mr. Aryan Kaushal, Advocate
for appellants.

PARMOD GOYAL, J.

Unsuccessful plaintiffs (hereinafter referred to as '**appellants-plaintiffs**') being aggrieved by dismissal of their suit for specific performance of agreement dated 12.01.1979, which was dismissed by Court of Sub-Judge, Second Class vide judgment and decree dated 05.08.1987 and dismissal of appeal preferred by appellants-plaintiffs vide judgment and decree dated 06.10.1988 passed by Additional District Judge, Karnal, have filed present appeal.

2. Appellants-plaintiffs in their suit for specific performance had asserted that defendant had agreed to sell suit property duly described in plaint vide contract dated 12.01.1979. It was averred that plaintiffs who are real brothers are being represented through their general power of attorney, their father, namely Kidar Singh. That defendant was owner of land measuring 9 kanals 7 marlas i.e. 1/9th share in total land measuring

84 kanals 7 marlas. The land was purchased for a total consideration of Rs.2,000/-. The defendant had duly received the entire sale consideration, however, before the execution of the sale deed on 12.01.1979 and after scribing the sale deed one Kura, husband of defendant appeared and did not allow defendant to execute sale deed before Sub-Registrar. An application was duly filed by Kidar Singh, general power of attorney of plaintiffs before Sub-Registrar, wherein Kura and his son duly appeared, however vide order dated 07.07.1980, Sub-Registrar refused to register sale deed. Against order dated 07.07.1980, plaintiffs had filed an application under Section 73 of Indian Registration Act, 1908 before learned Collector. Learned Collector, exercising the powers of Registrar under the provision of Indian Registration Act, 1908, however, dismissed the application vide order dated 24.03.1981 being barred by limitation. It is asserted that plaintiffs through their father were ready and willing to perform their part of contract but it is defendant who had resiled and therefore, plaintiff are entitled to specific performance of contract dated 12.01.1979.

3. On notice, suit was resisted by the defendants. It was asserted that suit is barred under Section 77 of Indian Registration Act, 1908 and that the oral agreement to sell land was vitiated by fraud played by plaintiffs. Ownership of defendant over suit property, however, was admitted. Consideration to be Rs.2,000/- was denied. It was further averred that on 12.01.1979, the agreement to sell the suit for a total consideration of Rs.20,000/- was reduced in writing and Rs.2,000/- was paid as earnest money. Kidar Singh, general power of attorney of appellants-plaintiffs by misrepresenting had got thumb impression of

defendant on alleged sale deed representing same to be agreement to sell, wherein the earnest money of Rs.2,000/- was being paid against total consideration of Rs.20,000/-. However, when Kidar Singh asked defendant to appear before Sub-Registrar and admit the amount of Rs.2,000/- having received as sale consideration, she refused to appear as by that time her husband and son had also reached. That plaintiffs on 07.07.1977 and on 02.09.1977 had purchased the share of defendant's son measuring 9 kanals 7 marlas for consideration of Rs.10,000/- each. It was also asserted that on 09.06.1981, plaintiff out of joint land had sold 3 kanals 13 marlas land for consideration of Rs.40,000/- to Ajit Singh and these facts were duly admitted by plaintiffs before Sub-Registrar and Kidar Singh had tried to execute sale deed by playing fraud upon defendant by falsely showing consideration to be Rs.2,000/- whereas, it was fixed as Rs.20,000/-.

4. Following issues were framed from the pleadings of the parties:-

- "1. Whether the sale deed dated 12.01.1979 was duly executed by the defendant?OPP*
- 2. If issue No.1 is proved whether the full consideration mentioned in the sale deed was paid to the defendant?OPP*
- 3. Whether the plaintiff is entitled to specific performance of the contract by getting the said deed registered?OPP*
- 4. Whether the plaintiffs are in possession of the suit land? If so since when and in what capacity?OPP*
- 5. Whether defendant put her thumb impression on the sale deed dated 12.01.1979 under the impression that it was an agreement to sell? If so its effect? OPD"*
- 6. Whether the sale consideration between the parties was fixed at Rs.20,000/- and a sum of Rs.2,000/- was paid on the*

date of agreement?OPD

7. Whether the provision of Section 77 of the Indian Registration Act are applicable to the facts of the present case and the suit has not been brought within time?OPD

8. Whether Shri Kidar Singh is a duly authroised person to bring, the present suit on behalf of the plaintiffs as their general attorney?OPP.

9. Whether the suit is barred under principles of res judicata?OPD

10. Whether any fraud has been played upon the defendant? If so its effect? OPD

11. Relief."

5. In present case, the case of appellants-plaintiffs is that defendant had come straightway to execute sale deed on 12.01.1979. Appellants-plaintiffs had not pleaded existence of any prior agreement nor had produced the same. However, while appearing as PW2 Kidar Singh asserted that an agreement to sell was entered between the parties, a month prior to 12.01.1979 at the residence of Kura Ram. However, other witnesses i.e. PW-4 and PW-6 had stated execution of oral agreement to sell at bus stand of village Rai Kallan or at bridge of canal near bus stand. None of them knew about the total consideration of amount for which agreement was settled. Both the learned Courts below have found the evidence of PW2, PW-4 and PW-6 to be contradictory/discrepant and have rejected the case of plaintiffs.

6. As noted above, I have no reasons to differ with the conclusions drawn by Courts below on the basis of evidence on record. The collective reading of PW2 and PW6 i.e. general power of attorney, who was instrumental in getting the agreement scribed and attesting witnesses, respectively, and in fact goes to show that they have stated

facts differently and on appreciation cannot be held to be reliable. Some of the witnesses had stated that signatures were put before the Sub-Registrar and some of the witnesses had stated that parties had not appeared before Sub-Registrar.

7. I am in agreement with conclusion drawn by Courts below that purchase of 9 kanals 7 marlas land on 12.01.1979 is belied by fact that earlier also plaintiffs through their father had purchased land measuring 9 kanals 2 marlas vide sale deed 12.09.1979 and 07.07.1979 vide sale deeds, Ex.D3 and Ex.D4 from the sons of defendant and in these sale deeds, the consideration was Rs.10,000/-. This by itself is a suspicious circumstance which raises doubt over due execution of agreement for sale of land measuring 9 kanals 7 marlas for total consideration of Rs.2,000/-. The sons of defendant had sold part of same, measuring to same extent for an amount of Rs.10,000/- vide registered sale deeds in year 1977 at least 1 and 1/2 years prior to agreement to sell in question. Therefore, it would be totally unbelievable and unacceptable that defendant-respondent would have agreed to sell the same amount of land for Rs.2,000/-, when it was earlier sold for Rs.10,000/-.

8. Furthermore, it has also been proved from evidence of PW2 Kidar Singh that out of the land purchased by him from the sons of defendant, he had sold 3 kanals 12 marlas land in year 1981 for an amount of Rs.40,000/-. This fact also goes to show that consideration amount of Rs.2,000/- was result of fraud and fabrication as being alleged by defendant.

9. The evidence of DW1-Jasbir Singh in fact stands corroborated

by sale deeds, Ex.D3 and Ex.D4, which show that same land was sold five times in value 1 1/2 years prior to alleged agreement to sell.

10. I do not find any error in the findings of facts recorded by both the Courts in present case. Appellants-plaintiffs have failed to prove execution of agreement dated 12.01.1979. Same has been rightly held to be false and fabricated by both the Courts below, on the basis of evidence before them. On re-appreciation of evidence, I do not find any error in the conclusions drawn by learned Courts below which is plausible conclusion and, therefore, cannot be substituted by this Court in regular second appeal. No question of law arises.

11. Accordingly, present appeal is dismissed being without merit.

30.09.2025
Sunil Chander

(PARMOD GOYAL)
JUDGE

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